

18-2323-cv(L), 18-2552-cv(XAP)

United States Court of Appeals
for the
Second Circuit

TIME WARNER CABLE OF NEW YORK CITY LLC,

Petitioner-Cross-Respondent,

— v. —

NATIONAL LABOR RELATIONS BOARD,

Respondent-Cross-Petitioner.

ON REVIEW FROM THE NATIONAL LABOR RELATIONS BOARD

JOINT APPENDIX
Volume 1 of 3 (Pages A-1 to A-267)

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United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

November 16, 2018

Catherine O'Hagan Wolfe
Clerk of the Court
United States Court of Appeals
for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Re: *Time Warner Cable New York City, LLC v. NLRB*
2nd Cir. Nos. 18-2323 & 18-2552
Board Case No. 02-CA-126860

Dear Ms. Wolfe:

I am transmitting the Certified List of the contents of the Agency Record in the above-captioned case.

/s/ Linda Dreeben

Linda Dreeben

Deputy Associate General Counsel

NATIONAL LABOR RELATIONS BOARD

1015 Half Street, SE

Washington, DC 20570

Encls:

Case 18-2323, Document 61, 11/16/2018, 2435215, Page2 of 7

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

TIME WARNER CABLE NEW YORK CITY)	
LLC)	
)	Nos. 18-2323
Petitioner)	18-2552
)	
v.)	Board Case No.
)	02-CA-126860
NATIONAL LABOR RELATIONS BOARD)	
)	
Respondent)	

CERTIFIED LIST OF THE NATIONAL LABOR RELATIONS BOARD

Pursuant to authority delegated in Section 102.115 of the National Labor Relations Board's Rules and Regulations, 29 C.F.R. § 102.115, I certify that the list below fully describes all papers and documents, which constitute the record before the Board in Time Warner Cable New York City, LLC., Case No. 02-CA-126860.

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 Roxanne L. Rothschild
 Acting Executive Secretary
 National Labor Relations Board
 1015 Half Street, SE
 Washington, DC 20570
 (202) 273-2917

November 16, 2018

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

TIME WARNER CABLE NEW YORK CITY)	
LLC)	
)	No. 18-2323
Petitioner)	18-2552
)	
v.)	Board Case No.
)	02-CA-126860
NATIONAL LABOR RELATIONS BOARD)	
)	
Respondent)	

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2018, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ Linda Dreeben
 Linda Dreeben
 Deputy Associate General Counsel
 NATIONAL LABOR RELATIONS BOARD
 1015 Half Street, SE
 Washington, DC 20570

Dated at Washington, DC
 this 16th day of November 2018

2/6/2019

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TIME WARNER CABLE NEW YORK CITY, LLC

Case Number: 02-CA-126860**Location:** NEW YORK, NY**Date Filed:** 04/18/2014**Region Assigned:** Region 02, New York, New York**Status:** Open

Docket Activity

<u>Date</u>	<u>Document</u>	<u>Issued/Filed By</u>
02/05/2019	Notice of Appearance - Court	Petitioner
01/23/2019	Notice of Appearance - Court	Petitioner
11/30/2018	Circuit Court Ruling on Motion for Extension of Time (EOT)	Court Petitioner
11/16/2018	Certified List of Record	NLRB - GC
10/22/2018	Board Decision	NLRB - Board
10/17/2018	Circuit Court Ruling on Motion for Extension of Time (EOT)	Court Respondent
10/15/2018	Motion for Extension of Time EOT (Court only)	NLRB - GC
10/11/2018	Circuit Court Mediation Order*	Court
10/01/2018	ES Office EOT Response	NLRB - Board
09/27/2018	Letter To ES Office	Counsel for GC / Region
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The Docket Activity list does not reflect all actions in this case.

* This document may require redactions before it can be viewed. To obtain a copy, please file a request through our FOIA Branch.

Allegations

- 8(a)(3) Discipline
- 8(a)(1) Coercive Actions (Surveillance, etc)
- 8(a)(3) Changes in Terms and Conditions of Employment
- 8(a)(1) Interrogation (including Polling)

Participants

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Status: Open

Location: NEW YORK, NY

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Docket Activity

<u>Date</u>	<u>Document</u>	<u>Issued/Filed By</u>
09/24/2018	Opposition to Motion for Reconsideration	Charging Party
09/20/2018	Motion for Reconsideration	Charged Party / Respondent
09/20/2018	Circuit Court Mediation Order*	Court
09/19/2018	ES Office Letter	NLRB - Board
09/19/2018	Circuit Court Filing	Court Petitioner
09/19/2018	Circuit Court Filing	Court Petitioner
09/19/2018	Circuit Court Filing	NLRB - GC
09/19/2018	Circuit Court Filing	Court
09/14/2018	Circuit Court Order	Court Respondent
09/14/2018	Circuit Court Ruling on Motion for Extension of Time (EOT)	Court Respondent

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Docket Activity

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08/10/2018	Circuit Court Filing	Court Petitioner
08/10/2018	Circuit Court Filing	Petitioner
08/09/2018	Circuit Court Filing	Court Petitioner
08/09/2018	Circuit Court Filing	Petitioner
08/09/2018	Notice of Appearance - Court	NLRB - GC
08/09/2018	Circuit Court Filing	Petitioner
08/09/2018	Circuit Court Filing	Court Petitioner
08/09/2018	Circuit Court Filing	Petitioner
08/09/2018	Notice of Appearance - Court	Petitioner
08/09/2018	Circuit Court Filing	Court Petitioner

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08/08/2018	Circuit Court Filing	Court Petitioner
08/08/2018	Circuit Court Filing	Court Petitioner
08/08/2018	Circuit Court Filing	Court
08/08/2018	Petition for Review	Court Petitioner
07/10/2018	Circuit Court Order*	Court
06/22/2018	Board Decision	NLRB - Board
03/06/2018	Letter To ES Office	Counsel for GC / Region
02/22/2018	Letter To ES Office	Charging Party
02/20/2018	Letter To ES Office	Charged Party / Respondent
06/15/2017	Circuit Court Order	Court

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Docket Activity

<u>Date</u>	<u>Document</u>	<u>Issued/Filed By</u>
05/23/2017	Circuit Court Mandate	Court
04/12/2017	Letter To ES Office	Counsel for GC / Region
04/06/2017	Letter To ES Office	Charging Party
04/05/2017	ES Office Letter	NLRB - Board
04/03/2017	Motion to Take Notice	Charged Party / Respondent
03/28/2017	Circuit Court Filing	Court
03/28/2017	Circuit Court Order Affirming District Court	Court
03/22/2017	Oral Argument Notice*	Court
02/10/2017	Oral Argument Form	NLRB - GC
02/10/2017	Oral Argument Form	Court Plaintiff

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Docket Activity

<u>Date</u>	<u>Document</u>	<u>Issued/Filed By</u>
02/10/2017	Oral Argument Form	Court Defendant
02/10/2017	Oral Argument Notice	Court
02/08/2017	Letter To ES Office	Counsel for GC / Region
01/31/2017	Oral Argument Notice*	Court
12/13/2016	Opposition to Motion	Charged Party / Respondent
12/05/2016	Motion to Expedite Decision	Counsel for GC / Region
11/14/2016	Oral Argument Form	Court Plaintiff
11/11/2016	Reply Brief to Court of Appeals	Court Plaintiff
11/09/2016	Oral Argument Form	NLRB - GC
11/09/2016	Oral Argument Form	Court Defendant
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Docket Activity

<u>Date</u>	<u>Document</u>	<u>Issued/Filed By</u>
11/03/2016	Circuit Court Order	Court
10/28/2016	Intervenor Brief to Court of Appeals	NLRB - GC
10/28/2016	Answering brief to Ct of Appeals	Court Defendant
09/22/2016	Circuit Court Scheduling Order	Court
09/16/2016	Circuit Court Filing*	Court
09/16/2016	Circuit Court Filing*	Court
09/14/2016	Circuit Court Scheduling Order	Court
09/07/2016	Circuit Court Filing	Court
08/30/2016	Reply Brief to Answer to Exceptions	Charging Party
08/30/2016	Brief in Support of Exceptions	Charged Party / Respondent
<p>« first < previous ... 4 5 6 7 8 9 10 11 12 ...</p> <p>next > last »</p>		

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Docket Activity

<u>Date</u>	<u>Document</u>	<u>Issued/Filed By</u>
08/29/2016	Answering brief to Ct of Appeals	Court Plaintiff
08/23/2016	Reply Brief to Answer to Exceptions	Counsel for GC / Region
08/18/2016	Circuit Court Scheduling Order	Court
08/17/2016	Circuit Court Filing	Court Plaintiff
08/16/2016	Answering Brief to Exceptions	Charged Party / Respondent
08/16/2016	Answering Brief to Exceptions	Counsel for GC / Region
08/16/2016	Post-Hearing Brief to Board	Charging Party
08/10/2016	Brief to Court of Appeals	Court Defendant
08/10/2016	Appendix to Court of Appeals	Court Defendant
08/10/2016	Appendix to Court of Appeals	Court Defendant
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<u>Date</u>	<u>Document</u>	<u>Issued/Filed By</u>
08/09/2016	Circuit Court Filing	Court
08/04/2016	ES Office EOT Response	NLRB - Board
08/03/2016	Brief to Court of Appeals	Charged Party / Respondent
07/26/2016	Brief in Support of Exceptions	Charged Party / Respondent
07/26/2016	Exceptions to ALJD	Charged Party / Respondent
07/26/2016	Brief in Support of Exceptions	Counsel for GC / Region
07/26/2016	Exceptions to ALJD	Counsel for GC / Region
07/26/2016	Brief in Support of Exceptions	Charging Party
07/20/2016	Motion to Stay (Court Order or Judgment)	Court
07/18/2016	Opposition to Mot for Stay Pending Appeal	Employer

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Docket Activity

<u>Date</u>	<u>Document</u>	<u>Issued/Filed By</u>
07/13/2016	Request for an Extension of Time to File a Document*	Charged Party / Respondent
07/13/2016	Motion	NLRB - GC
07/06/2016	ES Office EOT Response	NLRB - Board
06/14/2016	Order Transferring Proceeding to the Board	NLRB - Board
06/14/2016	Administrative Law Judges Decision	NLRB - ALJ
05/20/2016	Post-Hearing Brief to ALJ*	NLRB - GC
05/20/2016	Post-Hearing Brief to ALJ*	NLRB - GC
05/20/2016	Post-Hearing Brief to ALJ	Counsel for GC / Region
05/20/2016	Post-Hearing Brief to ALJ	Charged Party / Respondent
05/20/2016	Post-Hearing Brief to ALJ	Charging Party

« first < previous ... 7 8 9 10 **11** 12 13 14 15
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Docket Activity

<u>Date</u>	<u>Document</u>	<u>Issued/Filed By</u>
04/08/2016	ES Office Letter	NLRB - Board
04/07/2016	Board Decision	NLRB - Board
04/06/2016	RD Order to Reschedule Hearing*	NLRB - GC
03/31/2016	Amended Complaint*	NLRB - GC
03/29/2016	Opposition to Motion for Summary Judgment	Counsel for GC / Region
03/25/2016	Answer to Complaint*	Charged Party / Respondent
03/23/2016	Reply to Opposition to Motion	Employer
03/21/2016	Opposition to Motion	Charging Party
03/21/2016	Motion	Employer
03/16/2016	Reply to Opposition to Motion	Employer
<p>« first < previous ... 7 8 9 10 11 12 13 14 15</p> <p>next > last »</p>		

The Docket Activity list does not reflect all actions in this case.

* This document may require redactions before it can be viewed. To obtain a copy, please file a request through our FOIA Branch.

Allegations

- 8(a)(3) Discipline
- 8(a)(1) Coercive Actions (Surveillance, etc)
- 8(a)(3) Changes in Terms and Conditions of Employment
- 8(a)(1) Interrogation (including Polling)

2/6/2019

NLRB | Public Website

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NATIONAL LABOR RELATIONS BOARD

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TIME WARNER CABLE NEW YORK CITY, LLC

Case Number: 02-CA-126860**Location:** NEW YORK, NY**Date Filed:** 04/18/2014**Region Assigned:** Region 02, New York, New York**Status:** Open

Docket Activity

<u>Date</u>	<u>Document</u>	<u>Issued/Filed By</u>
03/15/2016	Opposition to Motion for Summary Judgment	Counsel for GC / Region
03/07/2016	Attachments or Exhibits to Brief to Board	Employer
03/07/2016	Motion for Summary Judgment	Employer
03/04/2016	Answer to Complaint*	Charged Party / Respondent
02/29/2016	Amended Complaint*	NLRB - GC
02/10/2016	RD Order*	NLRB - GC
02/08/2016	Answer to Complaint*	Charged Party / Respondent
02/08/2016	Answer to Complaint*	Charged Party / Respondent
02/08/2016	Answer to Complaint*	Charged Party / Respondent
02/08/2016	Answer to Complaint*	Charged Party / Respondent

« first < previous ... 7 8 9 10 11 12 **13** 14 15

next > last »

The Docket Activity list does not reflect all actions in this case.

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- 8(a)(3) Discipline
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2/6/2019

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TIME WARNER CABLE NEW YORK CITY, LLC

Case Number: 02-CA-126860

Location: NEW YORK, NY

Date Filed: 04/18/2014

Region Assigned: Region 02, New York, New York

Status: Open

Docket Activity

<u>Date</u>	<u>Document</u>	<u>Issued/Filed By</u>
02/08/2016	Attachments or Exhibits to Brief to Board	Employer
02/08/2016	Motion for Summary Judgment	Employer
01/29/2016	Complaint and Notice of Hearing*	NLRB - GC
05/27/2015	RD Rescinded*	NLRB - GC
05/21/2015	Letter Revoking Dismissal*	NLRB - GC
02/05/2015	Appeal Acknowledgment Letter*	NLRB - GC
01/28/2015	Response to an Extension of Time Request*	NLRB - GC
01/20/2015	Response to an Extension of Time Request*	NLRB - GC
01/05/2015	Dismissal Letter*	NLRB - GC
08/19/2014	Amended Charge Letter*	NLRB - GC
<p>« first < previous ... 7 8 9 10 11 12 13 14 15</p> <p>next > last »</p>		

The Docket Activity list does not reflect all actions in this case.

* This document may require redactions before it can be viewed. To obtain a copy, please file a request through our FOIA Branch.

Allegations

- 8(a)(3) Discipline
- 8(a)(1) Coercive Actions (Surveillance, etc)
- 8(a)(3) Changes in Terms and Conditions of Employment
- 8(a)(1) Interrogation (including Polling)

2/6/2019

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TIME WARNER CABLE NEW YORK CITY, LLC

Case Number: 02-CA-126860

Location: NEW YORK, NY

Date Filed: 04/18/2014

Region Assigned: Region 02, New York, New York

Status: Open

Docket Activity

<u>Date</u>	<u>Document</u>	<u>Issued/Filed By</u>
08/19/2014	Amended Charge Letter*	NLRB - GC
08/19/2014	Signed Amended Charge Against Employer*	NLRB - GC
04/18/2014	Initial Letter to Charging Party*	NLRB - GC
04/18/2014	Initial Letter to Charged Party*	NLRB - GC
04/18/2014	Signed Charge Against Employer*	Charging Party
<p>« first < previous ... 7 8 9 10 11 12 13 14 15 »</p>		

The Docket Activity list does not reflect all actions in this case.

* This document may require redactions before it can be viewed. To obtain a copy, please file a request through our FOIA Branch.

Allegations

- 8(a)(3) Discipline
- 8(a)(1) Coercive Actions (Surveillance, etc)
- 8(a)(3) Changes in Terms and Conditions of Employment
- 8(a)(1) Interrogation (including Polling)

Participants

<u>Participant</u>	<u>Address</u>	<u>Phone</u>
Charged Party / Respondent <i>Legal Representative</i> Kenneth Margolis Kauff McGuire & Margolis LLP	950 Third Avenue, 14th Floor, New York, NY 10022	(212)909- 0705

A-23

APR-18-2014 09:51 From: ABGL LAW OFFICE

6317776906

To: 912122642450

P. 3/3

FORM NLRB-501
(11-79)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case 02-CA-126860

Date Filed 04/18/14

INSTRUCTIONS:

File an original together four copies and a copy for each additional charged party named in item 1 with the NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1 EMPLOYER AGAINST WHOM CHARGE IS BROUGHT		
a Name of Employer Time Warner Cable	b Number of workers employed Approx. 1600	
c Address (street, city, state, ZIP code) 60 Columbus Circle New York, NY 10023	d Employer Representative Kevin Smith kevin.smith@twcable.com	e Telephone No. (212) 364-8507 Fax No. 704-973-6246
f Type of Establishment (factory, mine, wholesaler, etc.) Cable Company	g Identify principal product or service Cable communications	
h The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsection (1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce with the meaning of the Act.		
2 Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)		
<p>Since on or about April 2, 2014, and at all times thereafter, the Employer, by its officers, agents and representatives has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, which rights are guaranteed in Section 7 of the said Act in order to discourage membership in IBEW Local 3 by creating the impression of surveillance of the employees and/or engaging in unlawful surveillance of the employees and by interrogating employees about their and their co-workers' protected and concerted activities.</p>		
By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act		
3 Full name of party filing charge (if labor organization, give full name, including local name and number) International Brotherhood of Electrical Workers, Local #3		
4a 2 Address (Street and number, city, state, and ZIP code) 158-11 Harry Van Arsdale Jr. Blvd. Flushing, NY 11358	4b Telephone No. (718) 591-4000 Fax No. (718) 570-1004	
5 Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Brotherhood of Electrical Workers, Local #3		
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. By <u>Robert T. McGovern</u> (signature of representative or person making charge) Robert T. McGovern Attorney for Local 3, IBEW Archer, Byington, Glennon & Levine LLP Address One Huntington Quadrangle, Suite 4C10, P.O. Box 9064, Melville, NY 11747-9064 (Fax) 631-777-6906 631-249-6565 (Telephone No.) April 18, 2014 (date)		

A-24



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 2
26 Federal Plz Ste 3614
New York, NY 10278-3699

Agency Website: www.nlrb.gov
Telephone: (212)264-0300
Fax: (212)264-2450



Download
NLRB
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August 19, 2014

Time Warner Cable of New York City LLC
Attn: Kevin Smith, Esq.
60 Columbus Circle
New York, NY 10023-5802

Re: TIME WARNER CABLE
Case No 02-CA-126860

Enclosed is a copy of the first amended charge that has been filed in this case.

Investigator: This charge is being investigated by Attorney AUDREY EVEILLARD whose telephone number is (212)264-0343. If the agent is not available, you may contact Supervisory Attorney GEOFFREY DUNHAM whose telephone number is (212)264-0322.

Presentation of Your Evidence: As you know, we seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations in the first amended charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Procedures: Your right to representation, the means of presenting evidence, and a description of our procedures, including how to submit documents, was described in the letter sent to you with the original charge in this matter. If you have any questions, please contact the Board agent.

Very truly yours,

A handwritten signature in black ink, reading "Karen P. Fernbach", is located below the "Very truly yours," text.

KAREN P. FERNBACH
Regional Director

Enclosure: Copy of first amended charge

A-25

TIME WARNER CABLE
Case 02-CA-126860

- 2 - August 19, 2014

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**TIME WARNER CABLE OF NEW YORK CITY
LLC**

Charged Party

and

LOCAL 3 IBEW

Charging Party

Case 02-CA-126860

AFFIDAVIT OF SERVICE OF FIRST AMENDED CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on August 19, 2014, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

Time Warner Cable of New York City LLC
Attn: Kevin Smith, Esq.
60 Columbus Circle
New York, NY 10023-5802

August 19, 2014

Date

Rhonda Rhodes, Designated Agent of
NLRB

Name

Signature



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 2
26 Federal Plz Ste 3614
New York, NY 10278-3699

Agency Website: www.nlrb.gov
Telephone: (212)264-0300
Fax: (212)264-2450



Download
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Mobile App

August 19, 2014

Local 3 IBEW
158-11 Harry Van Ardsdale Avenue
Flushing, NY 11365

Re: TIME WARNER CABLE
Case No. 02-CA-126860

We have docketed the first amended charge that you filed in this case.

Investigator: This charge is being investigated by Attorney AUDREY EVEILLARD whose telephone number is (212)264-0343. If the agent is not available, you may contact Supervisory Attorney GEOFFREY DUNHAM whose telephone number is (212)264-0322.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. If you have additional evidence regarding the allegations in the first amended charge and you have not yet scheduled a date and time for the Board agent to obtain that evidence, please contact the Board agent to arrange to present that evidence. If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed.

Procedures: Your right to representation, the means of presenting evidence, and a description of our procedures, including how to submit documents, was described in the letter sent to you with the original charge in this matter. If you have any questions, please contact the Board agent.

TIME WARNER CABLE
Case 02-CA-126860

- 2 - August 19, 2014

Very truly yours,

A handwritten signature in black ink, appearing to read "Karen P. Fernbach". The signature is fluid and cursive, with the first name "Karen" being more prominent than the last name "Fernbach".

KAREN P. FERNBACH
Regional Director

cc: Robert T. McGovern, Attorney
Archer Byington Glennon & Levine LLP
1 Huntington Quad Ste 4C10
Melville, NY 11747-4431

A-29

AUG-14-2014 18:06 From: ABGL LAW OFFICE

6317776906

To: 912122642450

P.2/2

NLRB FORM NO. 1
(10-9-93)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
AMENDED CHARGE AGAINST EMPLOYER

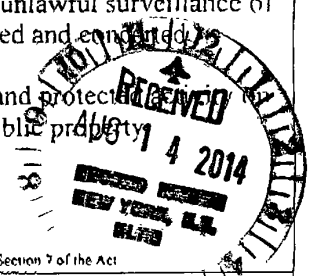
DO NOT WRITE IN THIS SPACE

02-CA-126860 8/14/14

INSTRUCTIONS:

File an original together four copies and a copy for each additional charged party named in item 1 with the NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Time Warner Cable	b. Number of workers employed Approx. 1600
c. Address (street, city, state, ZIP code) 60 Columbus Circle New York, NY 10023	d. Employer Representative Kevin Smith Kevin.Smith@twcable.com
e. Telephone No. (212) 364-8507	f. Fax No. 704-973-6246
g. Type of Establishment (factory, mine, wholesaler, etc.) Cable Company	h. Identify principal product or service Cable communications
i. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsection (1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce with the meaning of the Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)	
<p>Since on or about April 2, 2014, and at all times thereafter, the Employer, by its officers, agents and representatives has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, which rights are guaranteed in Section 7 of the said Act in order to discourage membership in IBEW Local 3 by creating the impression of surveillance of the employees and/or engaging in unlawful surveillance of the employees and by interrogating employees about their and their co-workers' protected and concerted activities.</p> <p>The employer also discriminated against four (4) employees for engaging in concerted and protected activities April 2nd, by suspending each for participating in a safety meeting with the Union on public property.</p> <p>By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.</p>	
3. Full name of party filing charge (if labor organization, give full name including local name and number) International Brotherhood of Electrical Workers, Local #3	
4a. 2. Address (Street and number, city, state, and ZIP code) 158-11 Harry Van Arsdale Jr. Blvd. Flushing, NY 11358	4b. Telephone No. (718) 591-4000 Fax No. (718) 570-1004
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Brotherhood of Electrical Workers, Local #3	
13. DECLARATION	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By <u>Marty Glennon</u> (signature of representative or person making charge) Marty Glennon Attorney for Local 3, IBEW	
Archer, Byington, Glennon & Levine LLP Address One Huntington Quadrangle, Suite 4C10, P.O. Box 9064, Melville, NY 11747-9064	
(Fax) 631-777-6906 631-249-6565 (Telephone No.)	
August 13, 2014 (date)	
WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)	





UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 02
26 Federal Plz Ste 3614
New York, NY 10278-3699

Agency Website: www.nlr.gov
Telephone: (212)264-0300
Fax: (212)264-2450

January 5, 2015

MARTY GLENNON, ESQ.
ARCHER, BYINGTON, GLENNON & LEVINE, LLP
PO BOX 9064
1 HUNTINGTON QUAD STE 4C10
MELVILLE, NY 11747-9064

Re: TIME WARNER CABLE
Case Nos.: 02-CA-125694
02-CA-126860
02-CA-127152
02-CA-131456

Dear Mr. Glennon:

We have carefully investigated and considered your charge that TIME WARNER CABLE OF NEW YORK CITY LLC has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your charges for the following reasons.

You have alleged in Case No. 02-CA-126860 that the Employer violated the Act by interrogating employees about their protected concerted activities and by suspending four employees for engaging in a safety meeting with Local 3, IBEW, AFL-CIO on public property. The evidence establishes that the Employer is a party to a collective bargaining agreement with the Union in effect from April 1, 2009 to March 31, 2013. On March 28, 2013, the parties entered a memorandum of agreement extending the collective bargaining agreement to March 31, 2017. Section 30 of the parties' collective bargaining agreement states that there shall be no cessation or stoppage of work, service or employment, on the part of, or at the instance of either party, during the term of the agreement. While you have characterized the events of April 2, 2014 as a safety meeting, the evidence establishes that on April 2, 2014, the employees engaged in a strike to protest the two-day suspensions of five coworkers and to protest the violation of their *Weingarten* rights, which in my view violated the Act. The April 2nd strike violated the no strike clause of the collective bargaining agreement. Further, in my view, to the extent that the job action on April 2, 2014 was in response to the Employer's alleged unfair labor practices, the alleged violations of the Act at issue were not sufficiently serious to warrant a finding that the

TIME WARNER CABLE
Case 02-CA-125694

- 2 -

no-strike clause did not cover this strike. *Mastro Plastics Corp.*, 350 U.S. 270 (1956). Inasmuch as strike was unprotected, the interrogations and suspensions flowing from the unprotected strike did not violate the Act. The evidence also establishes that the suspensions that flowed from the April 2 strike activity were based on the Employer's investigation into and assessment of the level employees' culpability for alleged misconduct, rather than on the level of employees' Section 7 protected activity. In this connection I note that the evidence establishes that the Employer's investigation into the strike activity was in part prompted by the fact that access to the Employer's facility was blocked during the April 2 job action.

You have also alleged in Case No. 02-CA-126860 that the Employer violated the Act by creating the impression of surveillance and/or engaging in surveillance of employees. The evidence established that the Employer possessed copies of employee Frank Cammariti's Facebook pages and that the Employer photographed employees while they were engaged in the April 2nd strike. The evidence establishes that employee Cammariti's Facebook page was open to the public for anyone to use. There is no evidence to suggest that the Employer obtained the Facebook pages in an unlawful manner. The evidence further establishes that the strike activity on April 2, during which blocking of the roadway occurred, raised legitimate security concerns warranting the Employer's photographing of employees' conduct.

Inasmuch as the evidence does not establish that the Employer violated the Act as alleged or in any other manner encompassed by your charge, I am dismissing your charge in Case No. 2-CA-126860.

Further, I am approving your request to withdraw the charges filed in Case Nos. 02-CA-125694 and 02-CA-131456.

Finally, I approve the request to withdraw those portions of Case No. 02-CA-127152 alleging that the Employer violated Section 8(a)(1) & (5) by failing and refusing to bargain over the training necessary for employees. The remainder of the charge will be retained for further processing.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlr.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlr.gov, click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

TIME WARNER CABLE
Case 02-CA-125694

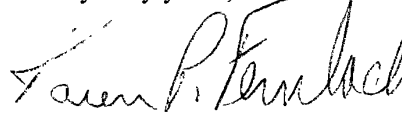
- 3 -

Appeal Due Date: The appeal is due on January 20, 2015. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed no later than 11:59 p.m. Eastern Time on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than January 19, 2015. If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely. If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is received on or before January 20, 2015. The request may be filed electronically through the *E-File Documents* link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after January 20, 2015, even if it is postmarked or given to the delivery service before the due date. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,



KAREN P. FERNBACH
Regional Director

Enclosure

TIME WARNER CABLE
Case 02-CA-125694

- 4 -

cc: KEVIN SMITH, ESQ.
TIME WARNER CABLE OF NEW YORK CITY LLC
60 COLUMBUS CIRCLE
NEW YORK, NY 10023-5802

DANIEL SILVERMAN, ESQ.
LAW OFFICE OF DANIEL SILVERMAN, LLP
52 THIRD STREET
BROOKLYN, NY 11231

LOCAL 3 IBEW
ATTN: DEREK JORDAN,
BUSINESS REPRESENTATIVE
158-11 HARRY VAN ARDSDALE AVENUE
FLUSHING, NY 11365-



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 02
26 Federal Plz Ste 3614
New York, NY 10278-3699

Agency Website: www.nlrb.gov
Telephone: (212)264-0300
Fax: (212)264-2450

May 21, 2015


Robert T. McGovern, Esq.
Archer Byington Glennon & Levine LLP
1 Huntington Quad Ste 4C10
P.O. Box 9064
Melville, NY 11747-4431

Re: Time Warner Cable
Case 02-CA-126860

Dear Mr. McGovern:

By letter dated January 5, 2015, the Region dismissed the following allegations contained in the above-captioned charge: interrogations, suspensions, surveillance and creating the impression of surveillance. On April 28, 2015, Administrative Law Judge Steven Fish issued a decision in *Time Warner Cable*, 29-CB-125701 which made findings of fact and conclusions of law impacting the Region's decisions as set forth in its letter of January 5. In particular, Judge Fish dismissed the allegation that the Union failed to execute an agreed upon contract and found there was no meeting of the minds between the parties and therefore no contract. As this decision is pending before the Board, and its final outcome is determinative of the issues in the instant matter, I hereby revoke the dismissal of the allegations as set forth in the Region's letter of January 5 and will hold the above-captioned case in abeyance pending a decision by the Board in 29-CB-125701, or expiration of the time within which to file exceptions to the Judge's decision.

Very truly yours,


Karen P. Fernbach
Regional Director

Enclosure

Time Warner Cable
Case 02-CA-126860

- 2 -

cc: GENERAL COUNSEL
OFFICE OF APPEALS
NATIONAL LABOR RELATIONS BOARD
1099 14TH STREET NW
WASHINGTON, DC 20570

MARTY GLENNON, ESQ.
ARCHER BYINGTON GLENNON & LEVINE LLP
1 HUNTINGTON QUAD STE 4C10
P.O. BOX 9064
MELVILLE, NY 11747-4431

KEVIN SMITH, ESQ.
TIME WARNER CABLE OF NEW YORK CITY LLC
60 COLUMBUS CIRCLE
NEW YORK, NY 10023-5802

DANIEL SILVERMAN, ESQ.
LAW OFFICE OF DANIEL SILVERMAN, LLP
52 THIRD STREET
BROOKLYN, NY 11231

LOCAL 3 IBEW
ATTN: DEREK JORDAN,
BUSINESS REPRESENTATIVE
158-11 HARRY VAN ARDSDALE AVENUE
FLUSHING, NY 11365

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

TIME WARNER CABLE NEW YORK CITY, LLC

and

Case 2-CA-126860

**LOCAL UNION NO. 3 INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,
AFL-CIO**

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO (Charging Party). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that TIME WARNER CABLE NEW YORK CITY LLC (Respondent) has violated the Act as described below.

1. (a) The charge in this proceeding was filed by the Charging Party on April 18, 2014, and a copy was served on Respondent by U.S. mail on April 18, 2014.

(b) The charge in this proceeding was amended on August 14, 2014, and copy was served on Respondent by U.S. mail on August 19, 2014.

2. (a) At all material times, Respondent has been a domestic limited liability company with its corporate office located at 60 Columbus Circle, New York, NY and places of business located in Bergen County, New Jersey (the Bergen facility); Lower Manhattan, New York (the

Southern Manhattan facility); Northern Manhattan, New York (the Northern Manhattan facility); Brooklyn, New York (the Brooklyn facility); Queens, New York (the Queens facility); and Staten Island, New York (the Staten Island facility) (collectively Respondent's facilities), engaged in providing cable television, telephone, and high speed internet services.

(b) During the preceding twelve months, the Respondent in conducting its operations described above in paragraph 2, derived gross revenues in excess of \$100,000 and purchased and received at each of its facilities, goods, supplies and utilities valued in excess of \$5,000 directly from suppliers outside the State of New York.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. At all material times, Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, Gregg Cory has held the position Vice President of Operations and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

6. (a) On or about May 22, 2014, Respondent suspended Diana Cabrera.

(b) Respondent engaged in the conduct described above in subparagraph (a), because Diana Cabrera participated in a job action led by the Charging Party, and to discourage employees from engaging in this or other concerted activities.

7. By the conduct described above in paragraph 6, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby

discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

8. By the unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before February 12, 2016, or postmarked on or before February 11, 2016.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf

document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on March 9, 2016, at 9:30 a.m. at the Mary Walker Taylor Hearing Room, at 26 Federal Plaza Room 3614, New York, New York, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338

Dated:



Karen P. Fernbach
Regional Director
National Labor Relations
Region 02
26 Federal Plz Ste 3614
New York, NY 10278-3699

Attachments

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

TIME WARNER CABLE NEW YORK CITY, LLC

and

Case 2-CA-126860

**LOCAL UNION NO. 3 INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,
AFL-CIO**

ANSWER

Time Warner Cable of New York City answers the Complaint as follows:

1. (a) Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1(a) of the Complaint except admits that it was served with a copy of an unfair labor practice charge on or about April 18, 2014.

(b) Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1(b) of the Complaint except admits that it was served with a copy of an amended unfair labor practice charge on or about August 19, 2014.

2. (a) Respondent admits the allegations contained in paragraph 2(a) of the Complaint except avers that Respondent's "Southern Manhattan facility" is located at 59 Paidge Avenue, Brooklyn, New York and is the location where the events at issue occurred.

(b) Respondent admits the allegations contained in paragraph 2(b) of the Complaint.

3. Respondent admits the allegations contained in paragraph 3 of the Complaint.

4. Respondent admits the allegations contained in paragraph 4 of the Complaint.

5. Respondent denies the allegations contained in paragraph 5 of the Complaint except avers that, at relevant times, Gregg Cory has held the position of Area Vice President and has been a supervisor within the meaning of section 2(11) of the Act.

6. (a) Respondent admits the allegations contained in paragraph 6(a) of the Complaint.

(b) Respondent denies the allegations contained in paragraph 6(b) of the Complaint.

7. Respondent denies the allegations contained in paragraph 7 of the Complaint.

8. Respondent denies the allegations contained in paragraph 8 of the Complaint.

AFFIRMATIVE DEFENSES

Assertion of an affirmative or other defense by Respondent does not constitute the assumption by Respondent of any burden of proof properly allocated to the

General Counsel of the National Labor Relations Board or the Charging Party as the case may be.

FIRST – The allegations of the Complaint are barred by the limitation of time in Section 10(b) of the Act.

SECOND – The allegations of the Complaint fail to state a claim for which relief may be granted.

THIRD – The alleged “job action” referred to in paragraph 6(b) of the Complaint was not conduct protected by the Act.

FOURTH – Diana Cabrera did not engage in conduct protected by the Act and was not suspended by reason of any such conduct.

FIFTH – The Complaint is barred, in whole or in part, by principles of res judicata, collateral estoppel, unclean hands and pursuant to *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955).

SIXTH – The Complaint should be deferred to the parties’ grievance and arbitration procedure and, because of the Charging Party’s refusal to pursue that procedure, should be dismissed.

WHEREFORE, Respondent Time Warner Cable of New York City LLC respectfully request that the Complaint be dismissed in its entirety, and that Respondent have such other, further and additional relief as may be warranted.

Dated: February 8, 2016
New York, New York

KAUFF MCGUIRE & MARGOLIS LLP
Attorneys for Respondent

By: Kenneth A. Margolis /BSK
Kenneth A. Margolis
950 Third Avenue, 14th Floor
New York, New York 10022
(212) 909-0705

CERTIFICATION OF SERVICE BY E-FILING & ELECTRONIC MAIL

The undersigned, an attorney admitted to practice before the Courts of the State of New York, affirms under penalty of perjury, that, on February 8, 2016, he attempted to serve a true and correct copy of the attached Answer on Behalf of Time Warner Cable of New York City LLC upon counsel for the General Counsel and counsel for the Charging Party via electronic mail, pursuant to the Board's e-filing rules at the following addresses designated by each attorney for this purpose, respectively:

Audrey Eveillard, Esq.
NLRB Region 2
26 Federal Plaza – Room 3614
New York, New York 10278
Audrey.Eveillard@nlrb.gov
(Counsel for the General Counsel)

Robert McGovern, Esq.
Archer, Byington Glennon & Levine LLP
One Huntington Quadrangle, Suite 4C 10
P.O. Box 9064
Melville, New York 11747
(Counsel for Charging Party)

Dated: February 8, 2016
New York, New York

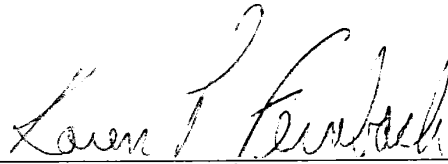

Daniel S. Kirschbaum

document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **March 9, 2016**, at 9:30 a.m. at the **Mary Walker Taylor Hearing Room, at 26 Federal Plaza Room 3614, New York, New York**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338

Dated: January 29, 2016



Karen P. Fernbach
Regional Director
National Labor Relations
Region 02
26 Federal Plz Ste 3614
New York, NY 10278-3699

Attachments

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

TIME WARNER CABLE NEW YORK CITY, LLC

and

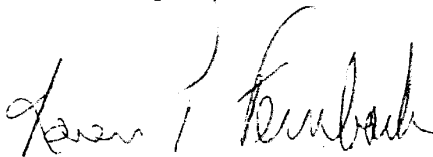
Case 2-CA-126860

**LOCAL UNION NO. 3 INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,
AFL-CIO**

ERRATUM

On January 29, 2016, due to a clerical oversight, the Complaint and Notice of Hearing in this matter was not dated. A corrected version of the Complaint and Notice of Hearing's last page is attached hereto.

Dated: February 10, 2016



Karen P. Fernbach
Regional Director
National Labor Relations Board
Region 2
26 Federal Plaza, Ste. 3614
New York, NY 10278-3699

Attachment

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

TIME WARNER CABLE NEW YORK CITY, LLC

and

Case 02-CA-126860

**LOCAL UNION NO. 3 INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,
AFL-CIO**

AMENDED COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board (the "Board"), the Complaint and Notice of Hearing issued on January 29, 2015, is amended as follows:

1. (a) The charge in this proceeding was filed by the Charging Party on April 18, 2014, and a copy was served on Respondent by U.S. mail on April 18, 2014.

(b) The charge in this proceeding was amended on August 14, 2014, and copy was served on Respondent by U.S. mail on August 19, 2014.

2. (a) At all material times, Respondent has been a domestic limited liability company with its corporate office located at 60 Columbus Circle, New York, NY and places of business located in Bergen County, New Jersey (the Bergen facility); Lower Manhattan, New York (the Southern Manhattan facility); Northern Manhattan, New York (the Northern Manhattan facility); Brooklyn, New York (the Brooklyn facility); Queens, New York (the Queens facility); and Staten Island, New York (the Staten Island facility) (collectively

Respondent's facilities), engaged in providing cable television, telephone, and high speed internet services.

(b) During the preceding twelve months, the Respondent in conducting its operations described above in paragraph 2, derived gross revenues in excess of \$100,000 and purchased and received at each of its facilities, goods, supplies and utilities valued in excess of \$5,000 directly from suppliers outside the State of New York.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. At all material times, Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, Gregg Cory has held the position Vice President of Operations and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

6. (a) On or about May 20, 2014, Respondent suspended Ralf Andersen and Frank Tsavaris.

(b) On or about May 22, 2014, Respondent suspended Azeam Ali and Diana Cabrera.

(c) Respondent engaged in the conduct described above in subparagraphs (a) and (b), because Ralf Andersen, Frank Tsavaris, Azeam Ali, and Diana Cabrera participated in a job action led by the Charging Party, and to discourage employees from engaging in this or other concerted activities.

7. By the conduct described above in paragraph 6, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

8. By the unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before March 7, 2016, or postmarked on or before March 6, 2016.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed

electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on April 11, 2016, at 9:30 a.m. at the Mary Walker Taylor Hearing Room, at 26 Federal Plaza Room 3614, New York, New York, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: 29th day of February, 2016



Karen P. Fernbach, Regional Director
National Labor Relations Board, Region 2
26 Federal Plaza, Room 3614
New York, New York 10278-0104

Attachments

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

TIME WARNER CABLE NEW YORK CITY, LLC

and

Case 2-CA-126860

**LOCAL UNION NO. 3 INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,
AFL-CIO**

ANSWER TO AMENDED COMPLAINT

Time Warner Cable of New York City answers the Amended Complaint as follows:

1. (a) Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1(a) of the Amended Complaint except admits that it was served with a copy of an unfair labor practice charge on or about April 18, 2014.

(b) Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1(b) of the Amended Complaint except admits that it was served with a copy of an amended unfair labor practice charge on or about August 19, 2014.

2. (a) Respondent admits the allegations contained in paragraph 2(a) of the Amended Complaint except avers that Respondent's "Southern Manhattan facility" is located at 59 Paidge Avenue, Brooklyn, New York and is the location where the events at issue occurred.

(b) Respondent admits the allegations contained in paragraph 2(b) of the Amended Complaint.

3. Respondent admits the allegations contained in paragraph 3 of the Amended Complaint.

4. Respondent admits the allegations contained in paragraph 4 of the Amended Complaint.

5. Respondent denies the allegations contained in paragraph 5 of the Amended Complaint except avers that, at relevant times, Gregg Cory has held the position of Area Vice President and has been a supervisor within the meaning of Section 2(11) of the Act.

6. (a) Respondent admits the allegations contained in paragraph 6(a) of the Amended Complaint.

(b) Respondent admits the allegations contained in paragraph 6(b) of the Amended Complaint.

(c) Respondent denies the allegations contained in paragraph 6(c) of the Amended Complaint.

7. Respondent denies the allegations contained in paragraph 7 of the Amended Complaint.

8. Respondent denies the allegations contained in paragraph 8 of the Amended Complaint.

AFFIRMATIVE DEFENSES

Assertion of an affirmative or other defense by Respondent does not constitute the assumption by Respondent of any burden of proof properly allocated to the General Counsel of the National Labor Relations Board or the Charging Party as the case may be.

FIRST – The allegations of the Complaint are barred by the limitation of time in Section 10(b) of the Act.

SECOND – The allegations of the Amended Complaint fail to state a claim for which relief may be granted.

THIRD – The alleged “job action” referred to in paragraph 6(b) of the Amended Complaint was not conduct protected by the Act.

FOURTH – Diana Cabrera, Ralf Andersen, Frank Tsavaris, and Azeam Ali did not engage in conduct protected by the Act and were not suspended by reason of any such conduct.

FIFTH – Ralf Andersen, Frank Tsavaris, and Azeam Ali, at relevant times, have been supervisors within the meaning of Section 2(11) of the Act and, as such, not protected by Section 7 of the Act.

SIXTH – The Amended Complaint is barred, in whole or in part, by principles of res judicata, collateral estoppel, unclean hands and pursuant to *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955).

SEVENTH – The Amended Complaint should be deferred to the parties’

grievance and arbitration procedure and, because of the Charging Party's refusal to pursue that procedure, should be dismissed.

WHEREFORE, Respondent Time Warner Cable of New York City LLC respectfully requests that the Amended Complaint be dismissed in its entirety, and that Respondent have such other, further and additional relief as may be warranted.

Dated: March 4, 2016
New York, New York

KAUFF MCGUIRE & MARGOLIS LLP
Attorneys for Respondent

By: 

Kenneth A. Margolis
950 Third Avenue, 14th Floor
New York, New York 10022
(212) 909-0705

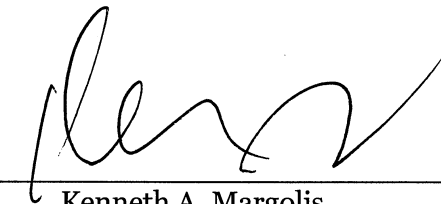
CERTIFICATION OF SERVICE BY E-FILING & ELECTRONIC MAIL

The undersigned, an attorney admitted to practice before the Courts of the State of New York, affirms under penalty of perjury, that, on March 4, 2016, he attempted to serve a true and correct copy of the attached Answer on Behalf of Time Warner Cable of New York City LLC upon counsel for the General Counsel and counsel for the Charging Party via electronic mail, pursuant to the Board's e-filing rules at the following addresses designated by each attorney for this purpose, respectively:

Allen Rose, Esq.
NLRB Region 2
26 Federal Plaza – Room 3614
New York, New York 10278
Allen.Rose@nrlrb.gov
(Counsel for the General Counsel)

Robert McGovern, Esq.
Archer, Byington Glennon & Levine LLP
One Huntington Quadrangle, Suite 4C 10
P.O. Box 9064
Melville, New York 11747
(Counsel for Charging Party)

Dated: March 4, 2016
New York, New York


Kenneth A. Margolis

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

TIME WARNER CABLE NEW YORK CITY, LLC

and

Case 2-CA-126860

**LOCAL UNION NO. 3 INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,
AFL-CIO**

AMENDED ANSWER TO AMENDED COMPLAINT

Time Warner Cable of New York City hereby amends its prior answer to the Amended Complaint as follows:

1. (a) Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1(a) of the Amended Complaint except admits that it was served with a copy of an unfair labor practice charge on or about April 18, 2014.

(b) Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1(b) of the Amended Complaint except admits that it was served with a copy of an amended unfair labor practice charge on or about August 19, 2014.

2. (a) Respondent admits the allegations contained in paragraph 2(a) of the Amended Complaint except avers that Respondent's "Southern Manhattan facility" is located at 59 Paidge Avenue, Brooklyn, New York and is the location where the events at issue occurred.

(b) Respondent admits the allegations contained in paragraph 2(b) of the Amended Complaint.

3. Respondent admits the allegations contained in paragraph 3 of the Amended Complaint.

4. Respondent admits the allegations contained in paragraph 4 of the Amended Complaint.

5. Respondent denies the allegations contained in paragraph 5 of the Amended Complaint except avers that, at relevant times, Gregg Cory has held the position of Area Vice President and has been a supervisor within the meaning of Section 2(11) of the Act.

6. (a) Respondent admits the allegations contained in paragraph 6(a) of the Amended Complaint.

(b) Respondent admits the allegations contained in paragraph 6(b) of the Amended Complaint.

(c) Respondent denies the allegations contained in paragraph 6(c) of the Amended Complaint.

7. Respondent denies the allegations contained in paragraph 7 of the Amended Complaint.

8. Respondent denies the allegations contained in paragraph 8 of the Amended Complaint.

AFFIRMATIVE DEFENSES

Assertion of an affirmative or other defense by Respondent does not constitute the assumption by Respondent of any burden of proof properly allocated to the General Counsel of the National Labor Relations Board or the Charging Party as the case may be.

FIRST – The allegations of the Complaint are barred by the limitation of

time in Section 10(b) of the Act.

SECOND – The allegations of the Amended Complaint fail to state a claim for which relief may be granted.

THIRD – The alleged “job action” referred to in paragraph 6(b) of the Amended Complaint was not conduct protected by the Act.

FOURTH –Diana Cabrera, Ralf Andersen, Frank Tsavaris, and Azeam Ali did not engage in conduct protected by the Act and were not suspended by reason of any such conduct.

FIFTH - The Amended Complaint is barred, in whole or in part, by principles of res judicata, collateral estoppel, unclean hands and pursuant to *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955).

SIXTH – The Amended Complaint should be deferred to the parties’ grievance and arbitration procedure and, because of the Charging Party’s refusal to pursue that procedure, should be dismissed.

WHEREFORE, Respondent Time Warner Cable of New York City LLC respectfully requests that the Amended Complaint be dismissed in its entirety, and that Respondent have such other, further and additional relief as may be warranted.

Dated: March 25, 2016
New York, New York

KAUFF McGUIRE & MARGOLIS LLP
Attorneys for Respondent

By: Kenneth A. Margolis
Kenneth A. Margolis
950 Third Avenue, 14th Floor
New York, New York 10022
(212) 909-0705

CERTIFICATION OF SERVICE BY E-FILING & ELECTRONIC MAIL

The undersigned, an attorney admitted to practice before the Courts of the State of New York, affirms under penalty of perjury, that, on March 25, 2016, he attempted to serve a true and correct copy of the attached Answer on Behalf of Time Warner Cable of New York City LLC upon counsel for the General Counsel (Allen M. Rose, Esq.) via electronic mail (Allen.Rose@NLRG.gov) and for the Charging Party (Robert McGovern, Esq., c/o Archer, Byington Glennon & Levine LLP) via electronic mail (rmcgovern@abgllaw.com), pursuant to the Board's e-filing rules.

Dated: March 25, 2016
New York, New York

Daniel S. Kirschbaum
Daniel S. Kirschbaum

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION2**

TIME WARNER CABLE NEW YORK CITY, LLC

and

Case 02-CA-126860

**LOCAL UNION NO. 3 INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,
AFL-CIO**

SECOND AMENDED COMPLAINT AND NOTICE OF HEARING

Based on a charge filed by Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO ("Charging Party") and Section 10(b) of the National Labor Relations Act ("the Act") 29 USC Section 151 et. seq. and Section 102.15 of the Rules and Regulations of the National Labor Relations Board ("the Board"), the undersigned issued a Complaint and Notice of hearing on January 29, 2016 alleging that Time Warner Cable of New York City, LLC ("Respondent") has violated the Act. On February 29, 2016, pursuant to Section 102.17 of the Board's Rules and Regulations, the undersigned issued an Amended Complaint. Pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board (the "Board"), the Amended Complaint and Notice of Hearing issued on February 29, 2016, is amended as follows:

1. (a) The charge in this proceeding was filed by the Charging Party on April 18, 2014, and a copy was served on Respondent by U.S. mail on April 18, 2014.

(b) The charge in this proceeding was amended on August 14, 2014, and copy was served on Respondent by U.S. mail on August 19, 2014.

2. (a) At all material times, Respondent has been a domestic limited liability company with its corporate office located at 60 Columbus Circle, New York, NY and places of business located in Bergen County, New Jersey (the Bergen facility); Lower Manhattan, New York (the Southern Manhattan facility); Northern Manhattan, New York (the Northern Manhattan facility); Brooklyn, New York (the Brooklyn facility); Queens, New York (the Queens facility); and Staten Island, New York (the Staten Island facility) (collectively Respondent's facilities), engaged in providing cable television, telephone, and high speed internet services.

(b) During the preceding twelve months, the Respondent in conducting its operations described above in paragraph 2, derived gross revenues in excess of \$100,000 and purchased and received at each of its facilities, goods, supplies and utilities valued in excess of \$5,000 directly from suppliers outside the State of New York.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. At all material times, Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act):

- (a) Gregg Cory – Vice President of Operations
- (b) Concetta D. Ciliberti – Vice President of Human Resources
- (c) Mary Maldonado – Director of Human Resources

(d) Daymion Montanez – Human Resources Representative

(e) Ari Norman – Human Resources Representative

6. Respondent, by the individuals named below, on or about the dates and at the locations opposite their names, interrogated its employees about their union activities and sympathies, and about the union activities and sympathies of other employees:

Name	Date	Location
(a) Mary Maldonado	in or about mid-April 2014	59 Paidge Ave, Brooklyn, New York
(b) Concetta D. Ciliberti	in or about mid-April 2014	59 Paidge Ave, Brooklyn, New York
(c) a male Human Resources Representative	in or about early May 2014	59 Paidge Ave, Brooklyn, New York

7. (a) On or about May 20, 2014, Respondent suspended Ralf Andersen and Frank Tsavaris.

(b) On or about May 22, 2014, Respondent suspended Azeam Ali and Diana Cabrera.

(c) Respondent engaged in the conduct described above in subparagraphs (a) and (b), because Ralf Andersen, Frank Tsavaris, Azeam Ali, and Diana Cabrera participated in a job action led by the Charging Party, and to discourage employees from engaging in this or other concerted activities.

8. By the conduct described above in paragraph 6, Respondent has been interfering with, restraining and coercing employees in the exercise of rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

9. By the conduct described above in paragraph 7, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its

employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

10. By the unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before April 14, 2016, or postmarked on or before April 13, 2016.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a

pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on April 11, 2016, at 9:30 a.m. at the Mary Walker Taylor Hearing Room, at 26 Federal Plaza Room 3614, New York, New York, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached described in the attached Form NLRB-4338.

Dated: March 31, 2016



Karen P. Fernbach, Regional Director
National Labor Relations Board, Region 2
26 Federal Plaza, Room 3614
New York, New York 10278-0104

Attachments

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

TIME WARNER CABLE NEW YORK CITY, LLC

and

Case 02-CA-126860

**LOCAL UNION NO. 3 INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,
AFL-CIO**

ORDER¹

Respondent Time Warner Cable New York City, LLC's Motion for Summary Judgment, as amended, is denied. The Respondent has failed to demonstrate that there are no genuine issues of material fact warranting a hearing and that it is entitled to judgment as a matter of law.

Dated, Washington, D.C., April 7, 2016.

MARK GASTON PEARCE,	CHAIRMAN
KENT Y. HIROZAWA,	MEMBER
LAUREN McFERRAN,	MEMBER

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

A-66



United States Government

NATIONAL LABOR RELATIONS BOARD

Office of the Executive Secretary

1015 Half Street, SE

Washington, DC 20570

Telephone: 202/273-1949

Fax: 202/273-4270

www.nlrb.gov

April 8, 2016

Re: **Time Warner Cable New York City, LLC**
Case 02-CA-126860

Allen M. Rose
Counsel for the General Counsel
NLRB, Region 2
26 Federal Plaza, Suite 3614
New York, NY 10278

Dear Mr. Rose:

On April 7, 2016, the Board issued an Order denying the Respondent's Motion for Summary Judgment. Accordingly, Counsel for the General Counsel's Motion to Strike or Alternatively to Respond to Respondent's Reply in Support of Motion for Summary Judgment and Respondent's Supplement to Motion for Summary Judgment, filed on March 29, 2016, is moot and will not be ruled on by the Board.

Very truly yours,

/s/ Farah Z. Qureshi
Associate Executive Secretary

cc: Parties

BEFORE THE
NATIONAL LABOR RELATIONS BOARD, REGION 2

In the Matter of:

Time Warner Cable New York
City, LLC,

Employer,

And

Local Union No. 3,
International Brotherhood of
Electrical Workers, AFL-CIO,
Union,

Case No. 02-CA-126860

The above-entitled matter came on for hearing pursuant to Notice, before THE HONORABLE MICHAEL A. ROSAS, Administrative Law Judge, at the National Labor Relations Board, Region 2, Javits Building, 26 Federal Plaza, 36 Floor Courtroom, New York, New York, 10278, Monday, April 11th, 2016, at 9:09 a.m.

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Wayne, New Jersey 07470
(973) 692-0660

A P P E A R A N C E S

1 On behalf of the General Counsel:

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4 Joseph Luhrs, Esq.
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6 Javits Building
7 26 Federal Plaza, Room 3614
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10 On Behalf of the Respondent:

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26 On Behalf of the Charging Party:

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36

	<u>I N D E X</u>					<u>VOIR</u>
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
1						
2						
3	Concetta Ciliberti	50	--	--	--	--
4	Gregg Cory	101	--	--	--	--
5	Ralf Andersen	121	137	--	--	--
6	Azeam Ali	143	154	--	--	--
7	Diana Cabrera	164	170	--	--	--
8	Frank Tsavaris	181	193	198	--	--
9						
10						

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4	ALJ-2	137	137
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6	General Counsel's		
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19	GC-27	95	97
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18	R-3 (c)	178	180
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20	R-3 (e)	178	180
21	R-4 (a)	195	197
22	R-4 (b)	195	197
23	R-4 (c)	195	197
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1		<u>E</u> <u>X</u> <u>H</u> <u>I</u> <u>B</u> <u>I</u> <u>T</u> <u>S</u>	
	<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
2			
3	Respondent's		
4	R-4 (d)	195	197
5	R-4 (e)	195	197
6			

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1 to me the formal papers. Can you describe them and offer them
2 for the record?

3 MR. ROSE: These are the formal papers in this
4 matter, Your Honor.

5 (General Counsel's Exhibit GC-1(a) through General Counsel's
6 Exhibit GC-1(q) identified and received)

7 I've shown them to Counsel for the other parties and
8 they have not expressed that they're -- they've expressed their
9 approval.

10 JUDGE ROSAS: Okay. Can you describe them?

11 MR. ROSE: Forgive me, Your Honor. I'm not familiar
12 with that procedure.

13 JUDGE ROSAS: General Counsel's 1(a) through (q)?

14 MR. ROSE: Q.

15 JUDGE ROSAS: For the record?

16 MR. ROSE: Yes.

17 JUDGE ROSAS: You're offering them?

18 MR. ROSE: Yes, I am, Your Honor.

19 JUDGE ROSAS: Any objection?

20 MR. MARGOLIS: Only, Your Honor, that we had
21 suggested that the formal papers should include the papers in
22 connection with the motion for summary judgment.

23 And secondly, the original letter from the regional
24 director dismissing the charge and the subsequent revocation of
25 that dismissal.

1 In a conversation with Mr. Rose, I think we are in
2 agreement that whether or not they're part of the formal
3 papers, we could simply admit them as separate exhibits and so
4 we propose to do that.

5 MR. ROSE: I would recommend, Your Honor, submitting
6 them as separate exhibits. We would have no problem with that.

7 JUDGE ROSAS: I'll take administrative notice that on
8 Friday, April 8th, 2016, the National Relations Board denied the
9 motion for summary judgment.

10 And I believe dismissed the General Counsel's motion
11 to strike as moot. You all can stipulate to whatever
12 designation you want to give those papers, okay?

13 The Board will have that obviously available to it.
14 Okay. Before we continue, let's issue a sequestration order in
15 this case.

16 There are discriminates allegedly involved. Okay.
17 So from this point on, any persons who expect to be called as
18 witnesses in this proceeding other than a person designated as
19 essential to the presentation of a party's case will be
20 required to remain outside the courtroom whenever testimony or
21 other proceedings are taking place.

22 A limited exception applies to persons who are
23 designated by each of the parties. You are all entitled to one
24 designee.

25 In instances in which your side plans on calling

1 someone who's going to testify to the same facts, transactions
2 and events that that person would be expected to testify to,
3 that designee should step out.

4 You can always have somebody else who is not involved
5 with the same line of testimony. It applies to everyone in
6 this proceeding so that there is some, in my view, integrity to
7 the sequestration rule.

8 Okay. As far as, and also reliability in the
9 testimony that I'm receiving from witnesses that are following
10 those that you call preceding them.

11 At the same time, it enables you in the instance in
12 which you might need some assistance from someone to designate
13 someone else if that person should exist. Okay.

14 Does anybody have any questions in that regard?

15 MR. MARGOLIS: Yes, Your Honor. Could you just
16 clarify and maybe I can just --

17 JUDGE ROSAS: Give me an example.

18 MR. MARGOLIS: -- so my understanding is correct. So
19 if we intend to call someone as a witness.

20 JUDGE ROSAS: Say an HR director.

21 MR. MARGOLIS: Okay. And the HR director is going to
22 testify to the same facts or the same circumstances.

23 JUDGE ROSAS: That your current witness on the stand
24 is going to testify to.

25 MR. MARGOLIS: Okay. Then that HR director is

1 sequestered, of course. However, with respect to the
2 designated representative, that's where I would like some
3 clarification.

4 JUDGE ROSAS: Well, you got to call that designated
5 representative to testify to the same facts and events.

6 MR. MARGOLIS: As in our example, the HR director,
7 then in that situation.

8 JUDGE ROSAS: Either one of them. The HR director of
9 the witness who was on the stand, the same concept applies.

10 MR. MARGOLIS: And --

11 JUDGE ROSAS: Bottom line is, these are all
12 witnesses. I've had some exceptions, like with subpoenaed
13 third parties whom you have not prepped, and you don't know
14 what they are going to say.

15 That's fine. But Counsel are all very competent, I
16 am sure, to know that when they're calling witnesses on the
17 stand what their answers to questions that you are going to
18 pose are going to be.

19 So I don't think that you need the assistance of the
20 designee when you're questioning your own witness.

21 'Cause they're going to testify to the same
22 transaction and events.

23 MR. MARGOLIS: Okay. So the exception does not
24 relate to witnesses called by the other side.

25 JUDGE ROSAS: No, no.

1 MR. MARGOLIS: The exception relates to our own
2 witnesses.

3 JUDGE ROSAS: Only your own. Essentially your
4 cumulative testimony.

5 I mean, it is really in another sense some cumulative
6 testimony that's permissible until it gets to that point where
7 I start sometimes becoming an activist Judge and saying,
8 listen, enough is enough on this particular point.

9 But again, we're talking about permissible
10 accumulative testimony. It's essentially another way of
11 looking at it.

12 Okay? Any other questions in that regard? Okay. So
13 the order prohibits all witnesses that I've referred to from
14 discussing with any other witnesses any possible witness
15 testimony that he or she has already given or will give.

16 Likewise, Counsel may not disclose to any witness the
17 testimony of any other witness.

18 Counsel may however, inform his own witness of the
19 content of testimony given by any opposing party's witness to
20 prepare to rebut that witnesses testimony and it is responsible
21 of Counsel to police the rule.

22 If you have any questions, let me know, okay? Is
23 there anything else before we proceed?

24 MR. MARGOLIS: Only if we could have a moment with
25 respect to you managing the sequestration before we proceed.

1 JUDGE ROSAS: Sure, sure. Off the record.

2 (Whereupon, a brief recess was taken)

3 JUDGE ROSAS: Okay. Back on the record. General
4 Counsel? Do you desire an opening?

5 MR. ROSE: I do desire an opening, Your Honor.
6 Before that, I wonder if Mr. Margolis can make clear on the
7 record what we talked about off the record in terms of his
8 answer and the further document pursuant to the subpoena.

9 MR. MARGOLIS: Certainly. Your Honor, with respect
10 to the answer to the second amended complaint, we would be
11 prepared to provide an answer on the record to those new
12 allegations at the commencement of the proceeding tomorrow.

13 With respect to the subpoena served by Counsel for
14 the General Counsel, a substantial volume of documents were
15 produced to Counsel for the General Counsel on Friday, April
16 8th.

17 There are some additional electronic documents that
18 we have been reviewing.

19 We hope to complete that process today and to be
20 ready to produce those by first thing tomorrow, along with a
21 privilege log relating to any documents as to which privilege
22 is claimed.

23 And while we're on the subject of subpoenas, perhaps
24 we can put on the record what was discussed with respect to
25 Respondent's subpoena's to the Charging Party which was a

1 subpoena to the custodian of records, subpoena duces tecum.

2 And a subpoena duces tecum to Derek Jordan who's a
3 business agent of the Charging Party. Those subpoena's were
4 both served on March 31st.

5 As of this point there has not been compliance and as
6 long as there is compliance with respect to the document
7 portion of the subpoenas before we have to begin our case, we
8 don't anticipate having any problem with that.

9 And as long as we have Mr. Jordan present for the
10 hearing, by the time we commence our case, then that will be
11 fine.

12 MR. MCGOVERN: Your Honor, as I indicated off the
13 record before this morning was the first I heard of any
14 subpoena, although your rules provide that courtesy copy should
15 have been sent to Counsel.

16 They weren't. When I spoke to my client on Friday,
17 they were unaware of any subpoena.

18 As I'm sitting here today I don't know that any
19 subpoenas were served on them, except for Counsel's
20 representation. And at this point, I have nothing further to
21 say.

22 JUDGE ROSAS: Is your client present in the building
23 today?

24 MR. MCGOVERN: No.

25 JUDGE ROSAS: So when we have our first break, I'm

1 going to ask you to communicate with your client and see what
2 the story is.

3 MR. MCGOVERN: Of course.

4 JUDGE ROSAS: All right. So we can kind of get the
5 engines working on this.

6 MR. MARGOLIS: Your Honor, when we provided copies of
7 the subpoenas to Mr. McGovern, as he indicated this morning, we
8 also provided copies of the affidavits of service. Which were
9 dated March 31st.

10 JUDGE ROSAS: Okay. We're all going to endeavor to
11 produce the subpoena documents in an expeditious fashion so we
12 don't duly delay the proceeding.

13 Okay. Any other issues in this regard, you'll bring
14 them to my attention. Okay. We're ready with a brief opening.

15 While the General Counsel and/or Charging Party are -
16 - while the General Counsel is giving his opening, Charging
17 Party, as well as Respondent can ponder whether they want to
18 follow with their own, waive or reserve until the beginning of
19 your case to give one. Okay? All right. Go ahead.

20 MR. MARGOLIS: Your Honor, one last question. The
21 sequestration order, is that in effect from this moment on or
22 only when the first witness takes the stand.

23 JUDGE ROSAS: When the witnesses take the stand.

24 MR. MARGOLIS: Thank you.

25 MR. ROSE: Thank you, Your Honor. The facts of this

1 case concern union activity that occurred in front of
2 Employer's facility on Paidge Avenue in Brooklyn, on the
3 morning of April 2nd, 2014.

4 Your Honor will hear witnesses and read evidence
5 referring to that activity in various ways as a strike or a
6 work stoppage, as a job action, as a safety meeting or as a
7 blockade.

8 Whatever it is called, it cannot be disputed that the
9 employees on that morning were engaged in concerted union
10 activity.

11 The question in this case is whether the four
12 discriminates engaged in conduct during that activity such that
13 the employees lost protection of the act.

14 General Counsel's position is, as I believe the
15 evidence will show is that these employees did not engage in
16 any such conduct whatsoever and thus were disciplined because
17 of their protected activity.

18 Your Honor will hear testimony from the four
19 suspended employees about what they did that morning.
20 Generally that and other evidence will show that the union
21 representatives and some employees arrived early in the morning
22 and parked their cars in the middle of the street of
23 Respondent's facility.

24 Sometime later employees arrived in the street and
25 many delayed starting work preferring to gather with each other

1 and their union representatives to hear what they had to say.

2 The evidence will reveal that the impetus for this
3 job action was found in large manner by the events of the
4 previous day, April 1st.

5 A group of foreman, including two discriminates here,
6 were suspended for refusing to accept a directive to accept
7 tools.

8 The tools directive was a subject of a grievance. A
9 shop steward was suspended for alleged conduct while
10 representing one of these foreman.

11 And the union learned that a foreman did not have his
12 shop steward present during the delivery of the tools
13 suspension.

14 Your Honor will hear evidence that the employer held
15 investigatory interviews about a few weeks later and ultimately
16 issued final written warnings to many employees and suspensions
17 to a few others, including the four here.

18 The General Counsel alleges that during these
19 investigatory interviews, the employer unlawfully interrogated
20 employees.

21 Your Honor will hear testimony regarding employer's
22 reasons for the discipline, however at this point I have to
23 digress to an important aspect of a long background of this
24 case and a key to understanding what is before Your Honor.

25 The evidence will show that at the time of the

1 activity and the discipline, the parties were laboring under
2 the impression that there was a no strike clause in effect.

3 The reasons for this impression are amply set forth I
4 the findings and fact of the Board's decision and the case
5 number 353 NLRB 30.

6 Which was a case deciding whether the union had
7 failed to execute a CBA incorporating a MOU, entered into about
8 a year before the April 2nd activity in March 2013, which was
9 about the time that the parties CBA was set to expire.

10 The Board upheld Judge Fish's decision that there was
11 no meeting of the minds when the MOU was signed in March 2013,
12 and therefore there was no CBA in effect after the last CBA
13 expires.

14 It is the General Counsel's position, based on the
15 Boards finding of this case that the no strike clause in the
16 last CBA did not survive the expiration of that CBA because
17 under Board law the clause was a waiver of rights that does not
18 survive the expiration.

19 The Board case is essential to the facts before Your
20 Honor, because the employer disciplined the four employees
21 among others for, and I quote from the disciplinary forms, "On
22 April 2nd, 2014, there was a blockade on Paidge Avenue involving
23 Local 3 representatives and WTWC bargaining unit employees that
24 prevented ingress and egress to and from Paidge Avenue delaying
25 work for over an hour."

1 This action was a work stoppage in clear violation of
2 the collective bargaining agreement. Now, it is understandable
3 that an employer would discipline employees for engaging in an
4 unlawful work stoppage if it thought there was a no strike
5 clause in effect.

6 But today, here, Your Honor, without a reason for the
7 discipline of the four employees grounded in the rationale of
8 the no strike clause, the employer's now left with arguing that
9 employees were disciplined because they "participated in a
10 blockade of ingress and egress," which disrupted employees
11 operations.

12 Now, it may be true under the act that when employees
13 block ingress or egress during a primary picketing or strike
14 activity, those employees may lose protection of the act.

15 But the relevant cases concern employees who were
16 actually doing the blocking. That is to say the employees with
17 their bodies standing in front of other employees or delivery
18 trucks, for example, that are trying to enter or exit the
19 employer's premises.

20 That is not the case here as the evidence will show,
21 Your Honor. The evidence will show that the four suspended
22 employees did not engage in blocking.

23 This is apparent from Respondent's own position on
24 the facts found among other places in its motion for summary
25 judgment which I will now incorporate into my opening.

1 On page 4 of its motion, it describes how starting on
2 6:23 a.m. that morning, union representative, Derek Jordan was
3 first to park his car in the middle of the street.

4 And during the next 10 minutes, he was joined by
5 others who parked their cars in the street.

6 After describing the last car parking at 6:33 a.m.,
7 the employer admits, and now I quote, "At that point Local 3's
8 blockade was fully in place and was impregnable.

9 Over the course of the next hour, as a result of the
10 placement of these vehicles to block the street, traffic backed
11 up Paidge Avenue and spilled over into the adjoining
12 intersection with Provost Street rendering the facility
13 inaccessible to vehicles.

14 Having blocked the street and accessed the facility
15 with their vehicles, Jordan and his cohorts stood in Paidge
16 Avenue and continued to hand out flyers."

17 Thus there was a blockade of cars fully formed and
18 "impregnable" at 6:33 a.m. about a half hour before employees
19 arrived for their first shift at 7:00 a.m.

20 General Counsel will show that the four suspended
21 employees had absolutely nothing to do with the placement of
22 the cars that created this impregnable blockade.

23 In General Counsel's view the evidence will plainly
24 show that for not only the hour between 6:33 and 7:33, as
25 stated in Respondent's facts, that until the very end of the

1 activity, it was the vehicles and only the vehicles that by
2 remaining parked where they were, caused what the employer
3 refers to as a blockage.

4 Many employees arriving for their shifts at the
5 facility stood near or around the cars.

6 You will hear evidence that employees at around 7:33
7 gathered around the union reps in the street, near a cluster of
8 cars and listened to remarks made by union representatives.

9 Thus General Counsel's position is based on both
10 logic and principle. In terms of logic, it is by definition
11 impossible for an impregnable blockade of cars to become more
12 impregnable due to the presence of employees.

13 Impregnable is a binary concept, Your Honor,
14 something is either impregnable or it isn't.

15 If a group of people standing next to an impregnable
16 brick wall, those people cannot add to the impregnability of
17 that brick wall, and they're not responsible for erecting the
18 impregnable brick wall unless they're the bricklayers.

19 The principal supporting General Counsel's case was from
20 the act, this is case is important, because employer cannot
21 discipline employees from alleged conduct purport rated by
22 their union representatives or other employees.

23 If 10 employees are standing on a picket line, if a
24 supervisor walks by and one employee sticks his foot out and
25 trips his supervisor, the other nine employees did not engage

1 in misconduct justifying discipline.

2 Now, if here, the four employees cannot be
3 disciplined for a blockade they had nothing to do with
4 erecting, because they had nothing to do with placing the cars
5 in the street.

6 The most that they did was stand near the cars, as
7 the evidence will show.

8 Two more points, Your Honor. None of the four
9 employees were scheduled to work that day. That is
10 undisputable.

11 So even if there was a no strike clause in effect,
12 which there wasn't, these employees could not have been on
13 strike, because they were not scheduled to work.

14 The most one could say is that they were there that
15 day showing solidarity with striking coworkers which certainly
16 is not misconduct.

17 Furthermore in the General Counsel's view, the
18 disciplinary documents and employer's stated position
19 demonstrate that the employer gave them two weeks suspension
20 precisely because they were not scheduled to work.

21 The employer gave only written warnings to those
22 employees who were not on the schedule. They only got written
23 warnings.

24 In other words because these four employees made
25 extra effort to join their fellow union members when they could

1 have relaxed at home, they were disciplined.

2 That's the General Counsel's position that this
3 demonstrates that the employer unlawfully muted out extra
4 punishment on these employees solely based on the strength of
5 their union support.

6 Finally, should the employer attempt to put in
7 evidence that the union took actions inconsistent with the non-
8 existence of the CBA and the no strike clause, I commend, Your
9 Honor, to footnote 1 of the Board's decision affirming Judge
10 Fish's recommended order.

11 In that footnote the Board denied employer's notion
12 to reopen the record to receive such evidence, deeming it
13 irrelevant to the question of whether CBA was in effect. Thank
14 you very much.

15 JUDGE ROSAS: Charging Party, do you have anything to
16 say at this point, or you want to reserve or waive?

17 MR. MCGOVERN: I will reserve at this time.

18 JUDGE ROSAS: Okay. Respondent?

19 MR. MARGOLIS: As you've heard, Your Honor, the
20 second amended complaint alleges that four individuals employed
21 by Time Warner Cable were suspended for specific activity.

22 That is for participating in a job action led by
23 their union. Here's what actually happened.

24 \

25 Time Warner's Cable facility on Paidge Avenue in

1 Brooklyn consists of a warehouse, garage, and office space
2 where about 600 employees work.

3 Technicians are dispatched from that facility to
4 service customers in Manhattan. For over an hour on April 2nd,
5 2014, the Charging Party of Local 3, led by its business agent,
6 Derek Jordan blocked Paidge Avenue, a dead-end street where the
7 facility is located with a mob of people and vehicles.

8 That's the conduct that underlies this complaint.
9 They blocked the street and the facility with people and
10 vehicles for over an hour.

11 That's the conduct that is alleged in the complaint
12 as being the protected activity involved in this case.

13 The blockade started when Mr. Jordan drove his car up
14 to the facility and parked it perpendicular to the flow of
15 traffic and then directed other vehicles to further park their
16 cars to park across the direction of traffic in the same
17 manner.

18 Before too long and very predictably, a severe
19 bottleneck in this dead-end street resulted. And as a
20 practical matter, the entrances and exits from the facility
21 were sealed off.

22 Scores of technicians were unable to report for work
23 for the duration of this blockade. And as a consequence, the
24 operation was completely shut down.

25 And the company was unable to service its customers

1 who had critical early morning appointments.

2 Following these events, the company conducted an
3 investigation.

4 It reviewed the security video of the blockade and it
5 identified and interviewed with their shop steward's
6 participation the individuals who had participated in the
7 blockade.

8 All four of the alleged discriminates admitted that
9 they had been present.

10 Now, given the egregious nature of this blockade,
11 Time Warner Cable surely would have been justified in
12 terminating the employment of the all of the participants, but
13 it didn't.

14 The company took far more measured actions. Most of
15 the individuals who were seen participating in this blockade,
16 received final written warnings.

17 Those who were the most culpable, which includes the
18 four alleged discriminates here, received two weeks
19 suspensions.

20 And the reason that they were determined to be the
21 most culpable, that is these four was that they had no
22 legitimate reason to be at the facility at all.

23 They were not scheduled to work. So while many of
24 the employees who were seen blocking the street may have been
25 attempting to get to work, these four obviously were not.

1 They weren't there in an attempt to get to work and
2 they were seen on the video participating in the blockade.
3 Now, to be clear, there's no allegation in the complaint the
4 that four alleged discriminates were singled out for more
5 severe discipline because of a degrees of Section 7 activity.

6 In fact, the regional director originally dismissed
7 the charge and specifically found among other things that these
8 individuals were not singled out on any unlawful basis.

9 They weren't selected for discipline based on any
10 Section 7 activity.

11 Now, although the regional director later revoked the
12 dismissal of the charge, the revocation of that dismissal was
13 on other grounds that do not affect the regional director's
14 finding that the alleged discriminates were not given enhanced
15 punishment based upon their degree of Section 7 conduct.

16 That finding was true then and it's true now. So
17 according to the complaint, the sole ostensible protected
18 activity in which these suspended employees engaged was
19 participating in Local 3's April 2nd, 2014, "job action."

20 No other alleged Section 7 activity, and since that
21 alleged job action, we will show was clearly unprotected, the
22 complaint falls away.

23 Now, the Administrative Law Judge may be anticipating
24 being faced with a difficult fact finding difficult resolution
25 of credibility disputes to ascertain exactly what happened on

1 April 2nd. But that's not the case, because we fortunately have
2 security video that shows the entire blockade.

3 It showed Derek Jordan parking his car perpendicular
4 to the direction of traffic. It shows him directing other cars
5 to do the same.

6 It shows how Jordan gathered dozens of employees into
7 a mob that completely blocked the street. It shows the four
8 alleged discriminates in the midst of that mob.

9 It shows that the traffic rapidly built up on Paidge
10 Avenue until the street was completely filled with people and
11 vehicles, sealing off the entrances to the facility and it
12 shows that the flow of traffic into the facility was brought to
13 a standstill for over an hour.

14 That's the conduct that underlies this complaint.
15 It's settled law that mass picketing or blocking of an egress
16 and ingress is now protected by the act.

17 And there's no doubt, no doubt at all that that's
18 what occurred on April 2nd, 2014. You'll see it with your own
19 eyes.

20 And yet, the second amended complaints alleges in
21 paragraph 7(c) that the alleged discriminates were suspended,
22 "because they participated in a job action led by the Charging
23 Party."

24 In other words, the complaint nowhere alleges that
25 the suspended employees engaged in protected activity, quite to

1 the contrary. Alleges only that they participated in what was
2 an unprotected mass picket and blockade.

3 And the complaint failed on that basis. Now, we want
4 to emphasize that these facts are sufficient to dispose of the
5 case.

6 But we want to bring to the attention of the
7 Administrative Law Judge, an alternative basis for dismissal.
8 And that is at the time the discipline occurred, the conduct of
9 the alleged discriminates violated what both parties recognized
10 was a valid and binding no strike obligation.

11 But again, before addressing these facts, we would
12 just note that since the blockade was clearly unprotected in
13 any event for the reasons we've explained, it's not even
14 necessary for the administrative law judge to address this
15 alternative argument.

16 Time Warner Cable and Local 3 were parties to a
17 collective bargaining agreement for the period April 1, 2009,
18 through March 31, 2013.

19 That agreement contained a broad no strike clause,
20 prohibiting among other things any stoppage of work. On March
21 28, 2013, representatives of both parties signed a
22 comprehensive memorandum of agreements, that in its own terms
23 extended the prior collective bargaining agreement from April
24 1, 2013 to March 31, 2017.

25 With only certain specified changes. The memorandum

1 agreement and thus, the parties 2013 to 2017 collective
2 bargaining agreement was then ratified by Local 3's membership.

3 As noted on Local 3's website, "On April 4th, 2013,
4 over 1,300 members from Time Warner Cable filled the auditorium
5 at Local 3 to vote.

6 They unanimously ratified a four-year agreement which
7 maintains their benefits increased wages by 12% and provide
8 continued training."

9 Most significantly, the memorandum of agreement did
10 not modify the preexisting no strike lines in any respect and
11 so that clause remained in effect under the new collective
12 bargaining agreement.

13 For approximately two years after signing and
14 ratifying the memorandum agreement, Local 3 benefited from its
15 provisions.

16 Time Warner Cable paid the increased wages and
17 benefits that were detailed in the memorandum of agreement and
18 continued to deduct dues pursuant to the preexisting union
19 security clause in the agreement.

20 And Local 3 filed at least 10 new arbitrations
21 against Time Warner Cable during 2013 and 2014, pursuant to the
22 collective bargaining agreements grievance and arbitration
23 provision.

24 On each of those occasions, Local 3 served a notice
25 of intention to arbitrate in which it specifically stated it

1 was bringing an arbitration pursuant to the terms of a
2 collective bargaining agreement existing between Union Local 3.

3 And framing the issue to be arbitrated in each case
4 as whether the employer violated various articles of the
5 collective bargaining agreement.

6 During that same period, 2013 and 2014, multiple
7 arbitrators recognized the collective bargaining agreement and
8 its arbitration provision by deciding these disputes that Local
9 3 had brought forward.

10 And if that's not enough to establish the existence
11 of a collective bargaining agreement and no strike clause, in
12 its formal pleadings, in representations before the U.S.
13 District Court and in sworn testimony, Local 3's
14 representatives asserted that Time Warner Cable and Local 3
15 were then parties to a collective bargaining agreement.

16 This is in 2014, by virtue of the memorandum
17 agreement that was signed in 2013. There was simply no doubt
18 whatsoever on that score.

19 Meanwhile, a dispute arose in the course of drafting
20 a new integrated contract document incorporating the memorandum
21 agreement.

22 Specifically when the company tendered a draft
23 document to the union, it omitted certain riders to the
24 predecessor agreement relating to a specific issues, certain
25 standby pay.

1 On the grounds that those riders in the company's
2 view did not continue in effect. Local 3 refused to sign an
3 integrated document without the rights.

4 As a result, Time Warner Cable filed a charge
5 alleging that Local 3 was guilty of a Hines violation, that is
6 it violated Section 8(b) and 8(d) by refusing to sign the
7 document.

8 A complaint issue at hearing was held. On April 28th,
9 2015, Administrative Law Judge, Fish, issued a recommended
10 decision, concluding that the unfair labor practice charge
11 should be dismissed or complaint should be dismissed because
12 the parties did not have a meeting of the minds as to whether
13 the riders were intended to continue in effect.

14 And that recommended decision was later adopted by
15 the Board. Now, the narrow issue before Judge Fish and the
16 Board was whether Local 3 was guilty of a Hine's violation.

17 That is whether the document, the specific document
18 that Time Warner Cable tendered to Local 3 accurately
19 memorialized the party's agreement.

20 Since Judge Fish found that there was a disagreement
21 as to whether the riders continued, he concluded that Local 3
22 had not violated the act by declining to sign the document that
23 Time Warner Cable had provided.

24 Now, in order to decide the Hines complaint, Judge
25 Fish was not called upon to decide whether the parties were

1 party to any collective bargaining agreement.

2 All he had to decide was whether the document that
3 was tendered by Time Warner Cable which omitted the riders, was
4 the agreement.

5 And notwithstanding that that was the narrow issue
6 before him, when Judge Fish concluded there was a disagreement
7 about the riders he wrote, "There was no meeting of the mind
8 and no contract."

9 Now, remember the Fish decision was issued a year
10 after the blockade in question here. And the discipline that's
11 involved.

12 Having signed and ratified the comprehensive
13 memorandum of agreement, having enjoyed the benefits of the
14 memorandum of agreement since March of 2015, having filed
15 numerous arbitrations pursuant to the collective bargaining
16 agreement, having secured several arbitration awards, pursuant
17 to the collective bargaining agreement, having done all that,
18 Local 3 for the first time in 2015 seized on that phrase in
19 Judge Fish's decision to claim that there is not and there
20 never was a collective bargaining agreement since March 31,
21 2013.

22 Given the facts that I have just outlined, all of
23 which are undisputed, that contention is absurd. And when the
24 Board affirmed Judge Fish's ruling and denied the motion to
25 supplement the record, all it found was that the evidence of

1 the existence of a collective bargaining agreement did not
2 change the result because there was no meeting of the minds as
3 to whether the riders were to continue.

4 That was the only issue in the case. So
5 consequently, Local 3's blockade on April 2nd, 2014, again,
6 that's the sole activity that's the predicate of this
7 complaint.

8 That blockade was manifestedly unprotected, not only
9 as previously discussed because it was a mass picket, but it
10 was unprotected for the separate and independent reason that it
11 was a violation of the no strike clause that was part of the
12 2009 to 2013 agreement and that continued in effect under the
13 2013 memorandum agreement.

14 Now, the Administrative Law Judge we submit should
15 not endorse Local 3's suggestion that the Fish decision, once
16 the Board adopted it, can properly be read as invalidating the
17 entire collective bargaining agreement that the parties had
18 been living under and acknowledging for years.

19 But even if the Administrative Law Judge were to buy
20 into that ridiculous notion, the supposed invalidation of a
21 collective bargaining agreement in 2015 surely can't
22 retroactively make unlawful discipline that was imposed years
23 earlier for breach of a no strike clause that both parties
24 acknowledged was in force and effect at the time the discipline
25 occurred.

1 This kind of back to the future notion has no place
2 in labor relations.

3 In fact, if you were to follow the General Counsel's
4 theory of this retroactive invalidation of the agreement and
5 retroactive rendering unlawful discipline that was imposed
6 because of a no strike clause, you would have to conclude that
7 a union would always be free to strike and an employer would
8 always be free to engage in a lockout at any point after the
9 parties ratify a memorandum of agreement but before they
10 execute an integrated contract document.

11 Totally irreconcilable most basic notions of
12 stability in labor relations. Now, that said, before
13 concluding, we just want to return to the events of April 2nd.

14 And to emphasize it, in order to dismiss this
15 complaint, the Administrative Law Judge need not address Time
16 Warner's Cable alternative defense that the blockade violated
17 the no strike obligation that was in effect at the time.

18 He need not address it, because the conduct for which
19 the alleged discriminates were suspended were so clearly an
20 unprotected mass picket, contract or no contract.

21 And the parties are not treading new ground with
22 respect to the facts that determine that fundamental issue.
23 And this case is not about whether employees lost the
24 protection of the act.

25 This case is about whether the blockade that Local 3

1 orchestrated was protected by the act, because that's what
2 alleged in the complaint.

3 And the reason that I say that the parties are not
4 treading new ground is several fold. First, following the
5 blockade, Time Warner Cable initiated an action for a boys
6 market injunction in the U.S. District Court.

7 Judge Weinstein denied the injunction solely because
8 he found insufficient proof of a threat of further blockades.
9 But in response to the Union's attempt to characterize its
10 blockade as a safety meeting, he stated, "that was not a safety
11 meeting.

12 They blocked ingress and egress to that plant. There
13 was a substantial delay in starting operations that day. I
14 don't want to get involved in any euphemisms."

15 That was Judge Weinstein's finding in May of 2014.
16 Second, the parties proceeded to arbitration over Time Warner
17 Cable's grievance alleging that the blockade violated the no
18 strike clause of the parties collective bargaining agreement.

19 Remember, until 2015, no one doubted that there was a
20 collective bargaining agreement and a no strike clause in
21 place. So the arbitration that Time Warner Cable brought
22 proceeded.

23 And there was no contention by Local 3 that it wasn't
24 arbitrical that there was no contract in effect. And the
25 arbitrator in that grievance brought by Time Warner Cable

1 awarded damages against Local 3.

2 And he made a number of factual findings that are of
3 note. Here's what the arbitrator said. He said, "The
4 evidentiary records strongly supports the company's contention
5 that by calling a "safety meeting" in the middle of the street
6 about a half hour before many bargaining unit employees and an
7 hour before many other bargaining unit employees were scheduled
8 to begin work on April 2nd, 2014, and thereafter conducting that
9 meeting for approximately ninety minutes, the union effectively
10 and materially impeded the company's normal business operations
11 at its Paidge Avenue facility.

12 And here's the most significant findings that the
13 arbitrator made.

14 Furthermore, the manner in which the meeting was
15 conducted impeded ready access to the company's Paidge Avenue
16 facility for all employees seeking to report to work, whether
17 or not they participated in the union meeting.

18 The decision made by the union's business agent to
19 drive down Paidge Avenue and to park his car perpendicularly to
20 the flow of traffic in the middle of the street, and as clearly
21 depicted on the video recording submitted in evidence, to
22 redirect the bargaining unit employee who had already properly
23 parked his car in a diagonal parking space to move his car into
24 the center of the Paidge Avenue roadway, demonstrated
25 persuasively that this union official either intended to

1 obstruct traffic as employees arrived for work or that he
2 blatantly disregarded the impact of his choice of venue for a
3 "safety meeting" as a disruptive factor.

4 Thus impairing the company's ability to conduct the
5 company's normal operations. That's the "job action" that
6 underlies the complaint that's before you.

7 Third, in a later decision confirming the arbitration
8 award, Judge Weinstein found the following facts.

9 On the morning of April 2nd, 2014, Local 3 members
10 parked their cars perpendicular to traffic and gathered on mass
11 in the street in front of Time Warner Cable's Paidge Avenue
12 facility at about 7:00 a.m. blocking the flow of traffic and
13 preventing employees from entering and leaving the building.

14 It's precisely participating in that gathering on
15 mass that these alleged discriminates engaged in. And it's
16 that conduct that the second amended complaint alleges is the
17 basis for a violation of Section 8(a)3.

18 Last, but certainly not least, the regional director
19 herself has already found that the activity which is alleged to
20 have prompted these suspensions, constituted blocking of
21 ingress and egress.

22 On January 5th, 2015, the regional director originally
23 dismissed the charge relating to these four suspensions, the
24 various suspensions that are before Your Honor.

25 Her dismissal was premised on two separate grounds.

1 First, the conduct of the alleged discriminates was not
2 protected because it was violation of the no strike provision
3 of the party's collective bargaining agreement.

4 Now, the regional director later revoked that
5 dismissal in light of the Board's decision on the Hines charge
6 which we previously discussed.

7 But second, and equally important, the regional
8 director found as a separate basis for dismissing the charge
9 that the activity was unprotected for another reason.

10 That it blocked egress from and ingress to the
11 facility. Here is what the regional director said in her
12 letter dismissing the charge.

13 The evidence also establishes that the suspensions
14 that flowed from the April 2nd strike activity were based on the
15 employer's investigation into an assessment of the level of
16 employee's culpability for alleged misconduct rather than on
17 the level of employee Section 7 activity.

18 In this connection, I note that the evidence
19 establishes that the employer's investigation into the strike
20 activity was in part prompted by the fact that access to the
21 employer's facility was blocked during the April 2nd, job
22 action.

23 The regional director did not say that the company
24 contends that the facility was blocked, it doesn't say that the
25 company alleges that the facility was blocked.

1 The regional director concluded that in fact the
2 demonstrators blocked the facility. Now, obviously the
3 litigation over the Hines charge has no effect whatsoever on
4 that conclusion of the regional director.

5 The regional director found that the demonstrators
6 blocked access to the facility on that basis the conduct was
7 unprotected.

8 That finding was true then and it's true now. And
9 yes, in the face of her own finding that the alleged
10 discriminates blocked access to the facility.

11 In the face of that finding the regional director has
12 issued the current complaint stating that Time Warner Cable
13 violated the act by suspending four employees for engaging in
14 that very conduct, the "job action" that you previously found
15 to be unprotected because it blocked access to the facility.

16 In sum, the video and the photos that you will see
17 will leave no doubt.

18 The April 2nd demonstration which is the sole alleged
19 protected activity in which the four suspended employees are
20 claimed to have engaged was actually a mass picket. It blocked
21 egress and ingress.

22 Every forum that has previously reviewed that
23 activity has reached that conclusion. The U.S. District Court
24 concluded that the demonstrators blocked egress and ingress.

25 The party's duly appointed arbitrator and the

1 regional director herself reached that same conclusion.

2 So the allegation of the second amended complaint
3 that the alleged discriminates were suspended for engaging in
4 this manifestly unprotected conduct should be dismissed.

5 Lastly, the recent amendment to the complaint
6 alleging that Time Warner Cable violated Section 8(a)1 by
7 questioning employees as part of its investigation of the
8 blockade merits only brief comment.

9 Like the suspensions, the allegation regarding
10 interrogation is easily disposed of.

11 The conduct of the alleged discriminates
12 participating on mass in that group of employees blocking the
13 road, that conduct was unprotected.

14 So the company's so called interrogation of them in its
15 legitimate investigation undertaken to ascertain their degree
16 of fault and the degree of fault of others was entirely
17 consistent with the ad.

18 So the allegation of unlawful interrogation can be
19 dismissed as well.

20 JUDGE ROSAS: All right. Are you ready to proceed?
21 First witness?

22 MR. MCGOVERN: If I may, Your Honor, ask for
23 permission to briefly address the alternative basis with
24 respect to the no strike clause issue.

25 JUDGE ROSAS: Okay.

1 MR. MCGOVERN: As Counsel for the General Counsel
2 stated in his opening the Board and Local 3 International
3 Brotherhood of Electrical Workers recorded at 363 NLRB 30
4 issued October 29th, 2015, affirmed the decision of
5 Administrative Law Judge, Stephen Fish.

6 Judge Fish had held that there was no meeting of the
7 minds and no contract.

8 Along with its exceptions, Time Warner filed a motion
9 to reopen the record to admit additional evidence concerning
10 the union's post hearing conduct and basically what they wanted
11 to put in was notices of intent to arbitrate and language from
12 some court proceedings briefs that the union had filed with
13 Judge Weinstein and that Boy's Market case.

14 I guess the reason that they concentrated on the post
15 hearing conduct is because under the rules where you can't
16 really make a motion to reopen the record based on prehearing
17 conduct that you had an opportunity to put the evidence in the
18 record at that time, but you didn't do it, if I understand
19 Counsel correctly, that's precisely what they plan on doing
20 here.

21 They're going to try to reopen that case by
22 proffering evidence concerning the union filed arbitration
23 demands or participated in an arbitration.

24 However, it's the Union's position and the Board's
25 position that any such attempt should be precluded. Now, I say

1 that because as Counsel for the General Counsel stated in his
2 opening, Your Honor, really need look not much further than
3 footnote 1 of that Board decision which states the Charging
4 Party moves to reopen the record to admit evidence that after
5 the hearing, the Respondent will notice its intention to
6 arbitrate grievances and "admitted the existence of a
7 collective bargaining agreement in arbitral and judicial
8 filings."

9 The Charging Party contends that this evidence
10 demonstrates that the Respondent unlawfully refused to execute
11 an agreed upon contract.

12 Contrary to the Charging Party's contention, the
13 Respondent's post hearing conduct shows only that the
14 Respondent mistakenly believed that the parties had reached
15 agreement on March 28th, 2013.

16 It does not bear on the relevant question of whether
17 the parties had reached a meeting of the minds regarding all
18 material terms of their successor agreement.

19 And that March 28, 2013 date, as Your Honor may
20 recall from Respondent's opening was the date that the parties
21 had signed a memorandum of agreement.

22 Now, after Judge Fish issued his decision, true, the
23 Union took the position that there was no collective bargaining
24 agreement in place, and therefore, the no strike clause wasn't
25 in place.

1 Respondent in its opening went through well, there
2 was the arbitration in the Judge Weinstein case in the eastern
3 district.

4 But what he didn't mention is that the arbitrator
5 issues a decision finding that the union violated the no strike
6 clause in the collective bargaining agreement even though the
7 union had brought to the arbitrator's attention Judge
8 Weinstein's decision and after that brought to the arbitrator's
9 attention the NLRB's decision.

10 The arbitrator issued his award in joining the union
11 from violations of the no strike clause as well as some
12 monetary damages.

13 The union made a motion to vacate the arbitration
14 award and the NLRB entered deemed in that action which is
15 docket number 1 Cole and 14-CV02437. That's Time Warner Cable
16 versus Local 3.

17 And on March 16th, 2016, the Board intervened on the
18 side of Local 3. And in its brief says the expiration of the
19 parties prior contracts fatally undermines TWC's motion to
20 confirm the final arbitration award.

21 TWC has argued at this Court that even if no
22 successor agreement is reached in March 2013, they duty to
23 arbitrate the grievance over the April 2014 work stoppage
24 continued.

25 This argument is plainly incorrect because the

1 obligation to submit a dispute for final binding arbitration
2 can only be created by agreement and not by aberration of the
3 act.

4 That obligation does not survive the expiration of a
5 contract at other places. And in its filing, the Board took
6 the position that claim preclusion should bar Time Warner from
7 attempting to relitigate any issues that were raised or could
8 have been raised before the NLRB in the Judge Fish case and
9 says that Time Warner Cable's attempt to confirm an arbitration
10 award that conflicts with the Board decision is nothing less
11 than a collateral attack on the Board's final judgment that no
12 successor contract is reached by the parties.

13 Such an attack is barred by principles of rez
14 judicata. And the Board also points out that Time Warner Cable
15 wants to take on the Boards decision affirming Judge Fish's
16 decision in order to do that in the circuit court by seeking a
17 review of that decision, not by a collateral attack before
18 Judge Weinstein, which he rejected and struck that portion of
19 the arbitration award.

20 Taking the Board's position that there was no
21 collective bargaining agreement in place and therefore that the
22 arbitrator couldn't direct an injunction for violating the no
23 strike clause, 'cause it didn't exist anymore.

24 It doesn't exist anymore. So the extent Respondent's
25 opening concerning its alternative basis is a signal that it

1 intends to use this hearing to relitigate those issues, I would
2 urge Your Honor to reject them based on what the Board's
3 position is in its intervention in the Eastern District case.

4 It's not just Local 3 saying well, the Board's
5 decision means there's no contract, therefore, no no strike
6 clause, it's what the Board itself said when it intervened.
7 Thank you.

8 JUDGE ROSAS: We're dealing with a lot of documents
9 that had been reference by the parties.

10 Documents speak for themselves. You going to put
11 them all in the record.

12 One question I'll have to the Respondent is was there
13 an appeal of the Board's decision issues on October 29th, 2015?
14 Affirming Judge Fish's decision.

15 MR. MARGOLIS: There hasn't at this point, Your
16 Honor. It's still under consideration.

17 And again, the Board was only called upon to decide
18 whether there was a meeting of the minds as to whether the
19 riders continue.

20 JUDGE ROSAS: The question I have for Charging Party
21 is is it the Charging Party's contention that the expired
22 contract in 2013? The previous contract expired in 2013?

23 MR. MCGOVERN: Correct.

24 JUDGE ROSAS: That the status quo did not continue or
25 did continue in any respect?

1 MR. MCGOVERN: The status quo is continuing but there
2 is no contract.

3 JUDGE ROSAS: Right. Except with respect to wages,
4 benefits and all of the terms, conditions and employment except
5 for job actions?

6 MR. MCGOVERN: Arbitration --

7 JUDGE ROSAS: Was that in the previous agreement?

8 MR. MCGOVERN: The no strike clause?

9 JUDGE ROSAS: Yes.

10 MR. MCGOVERN: Well, sure, that's why we're here.

11 JUDGE ROSAS: Right. Okay. I just want to make sure
12 I understand universe.

13 MR. MCGOVERN: And also the union hasn't arbitrated
14 any disputes either.

15 JUDGE ROSAS: I understand. 'Cause I haven't looked
16 at these documents yet.

17 MR. MCGOVERN: Of course.

18 JUDGE ROSAS: I just want to have a general sense.
19 Obviously the leeway. There are a lot of ramifications here.
20 We're going to make a record and may or may not.

21 I understand where Counsel is coming from with
22 respect to what may have already been decided. What might be
23 deemed in one respect.

24 And I'm speaking in the abstract here, because I
25 really don't know yet.

1 But, you know, there's a concern that I have to
2 ensure that the record is complete and enables me to address
3 all of the legal issues all at the same time weighing the
4 threat of going down the road of unnecessary collateral
5 litigation.

6 But that being said, we're ready to go. Okay.?
7 Ready to call your first witness?

8 MR. ROSE: I am, Your Honor. But before I call the
9 witness, can I have clarification on your rules with regard to
10 premarking? I've premarked all of the exhibits.

11 JUDGE ROSAS: Off the record.

12 (Whereupon, a brief recess was taken)

13 MR. ROSE: Your Honor, I just wanted to stipulate two
14 documents into the record. One was I'd like to offer General
15 Counsel Exhibit 2 which is Judge Fish's decision.

16 (General Counsel's Exhibit GC-2 identified)

17 And I would also like to offer and Mr. Margolis and I
18 had a conversation about this off the record. I'd like to
19 offer General Counsel Exhibit 3 the motion for summary
20 judgment, Time Warner's motion for summary judgment.

21 I just copied the motion without the exhibits,
22 however, I think Mr. Margolis, I believe he wants the entire
23 document in the record.

24 I agree with that if he wants that and I will
25 supplement that document once he had it in the record. So I

1 offer General Counsel's Exhibit 2 as Judge Fish's decision.

2 I offer General Counsel Exhibit 3 which is the Time
3 Warner motion for summary judgment with the caveat that we can
4 supplement it with the rest of the exhibits.

5 (General Counsel's Exhibit GC-3 identified)

6 JUDGE ROSAS: Any objection?

7 MR. MARGOLIS: Your Honor, we don't think that the
8 Fish decision is properly admitted into evidence. Obviously
9 you can take administrative notice of a Judge's or Board
10 decision.

11 And we certainly have no objection to admitting the
12 Time Warner motion for summary judgment.

13 JUDGE ROSAS: I'm going to receive General Counsel's
14 2 and 3.

15 (General Counsel's Exhibit GC-2 and General Counsel's Exhibit
16 GC-3 received)

17 MR. ROSE: May I give the documents to the parties
18 and the court reporter, Your Honor?

19 JUDGE ROSAS: Again, only if you need a witness at
20 some point to look at the document, have it in front of the
21 witness.

22 MR. ROSE: Okay. May we go off the record, Your
23 Honor?

24 JUDGE ROSAS: You want to go off, okay.

25 (Whereupon, a brief recess was taken)

1 JUDGE ROSAS: Okay.

2 MR. ROSE: Concetta Ciliberti, please, Your Honor.

3 I'd like to call her to the witness stand.

4 Whereupon,

5 CONCETTA CILIBERTI

6 Having first duly sworn, was called as a witness herein, and
7 was examined and testified as follows:

8 JUDGE ROSAS: All right. Please be seated. State
9 and spell your name and provide us with an address. Business
10 is fine.

11 THE WITNESS: Concetta Ciliberti. C-O-N-C-E-T-T-A.
12 C-I-L-I-B-E-R-T-I. 120 East 23rd Street, 7th floor, New York
13 City, New York, 10010.

14 MR. ROSE: Okay. Your Honor, may I approach so I can
15 distribute the sets?

16 Your Honor, just so we're clear, I've been handed a
17 stack of undoubtedly are going to be exhibits, and under your
18 procedure we should not look at those until they are
19 specifically shown to the witness. Thank you.

20 DIRECT EXAMINATION

21 Q Good morning, Ms. Ciliberti.

22 A Good morning.

23 Q Did I pronounce your name correctly?

24 A That's fine.

25 Q Thank you. Thank you for coming. Oh, by the way, I'm

1 Allen Rose. I'm Counsel for the General Counsel with the NLRB.

2 My first question is where do you work, who do you work
3 for and what is your job title?

4 A Time Warner Cable. I'm Vice President of Human Resources
5 for the New York City and Northeast regions.

6 Q How long have you had that position?

7 A About 15 years.

8 Q And could you please briefly describe your
9 responsibilities in that position?

10 A I'm responsible for employee and labor relations for both
11 locations.

12 Q And did you have these responsibilities that you described
13 in 2014 as well?

14 A Yes.

15 Q Okay.

16 Your Honor, I request permission to examine this
17 woman pursuant to Rule 611(c).

18 JUDGE ROSAS: Granted.

19 Q Where is your office located?

20 A 23rd Street between Park and Lexington Avenues in New York
21 City.

22 Q Are you familiar with the Paidge Avenue location?

23 A Yes, I am.

24 Q Are you familiar in terms of the -- well, tell me, how
25 often do you go there? How is your familiarity?

1 MR. MARGOLIS: Your Honor, I think it was a compound.

2 MR. ROSE: Oh, okay.

3 Q How often do you go there?

4 A Generally once a month.

5 Q Once a month, okay. And how long had you been going there
6 with that frequency?

7 A Since we opened that location.

8 Q About when was that, please?

9 A I don't recall. It's been a while.

10 Q Has it been over five years?

11 A Yes.

12 Q Are you familiar with while we're here today? The four
13 suspensions in question. The suspensions of Mr. Tsavaris, Ms.
14 Cabrera, Mr. Andersen and Mr. Ali?

15 A Yes.

16 Q Did you have any involvement in those suspensions?

17 A Yes.

18 Q Could you please describe your involvement?

19 A After we had determined that there was no plausible reason
20 for them to be participating in the blockade of our facility,
21 senior leadership and I discussed their involvement and we
22 determined that it was appropriate to suspend them for two
23 weeks.

24 Q Who is Greg Cory?

25 A Greg Cory is our AVP, area vice president for Southern

1 Manhattan.

2 Q Do you know where he works?

3 A He works at the Paidge Avenue location?

4 Q Was he working there to your knowledge in 2014?

5 A Yes.

6 Q Was he involved to your knowledge in the suspensions in
7 any way?

8 A Yes.

9 Q Could you describe his involvement?

10 A I don't recall if he participated in the delivery of the
11 suspension notices.

12 But he was part of -- he is one of the decision makers to
13 suspend the individuals.

14 Q Now, who were the decision makers?

15 A It would have been our regional vice president of
16 operations, myself, and Greg as well as our legal team.

17 Q Regional vice president of operations. Who is that?

18 A John Quigley.

19 Q John Quigley. So was this a consensus decision? Is that
20 what you're describing?

21 A We all agreed upon it, yes.

22 Q So with regard to the four employees in question and is it
23 okay if I refer to them as the four employees in question so I
24 don't have to repeat their names?

25 A Yeah.

1 Q Is that clear to you?

2 A Yes.

3 Q With respect to the four employees in question, can you
4 state the reason or reasons that they were suspended?

5 A The reason they were suspended was because they gave no
6 plausible business reason to be present at our location on that
7 particular morning.

8 So they were clearly there to disrupt our business.

9 Q Is it correct that they were afforded an opportunity to
10 give a plausible explanation?

11 A Yes, they were.

12 Q When were they?

13 A We interviewed all of the employees who were identified in
14 the video as participating in the blockade.

15 And during those interviews, they provided reasons why
16 they believed that they should be present at our location that
17 morning.

18 Q When you say -- about how many employees were you talking
19 about here when you said we interviewed all of the employees?

20 A Over 35 employees were interviewed.

21 Q And am I correct in saying, was it your testimony that
22 they were identified from looking at the video?

23 A Correct. We pulled our management team together and
24 watched the video together. And if any of us recognized an
25 individual in the video as participating we noted their name.

1 Q Now, is it correct to say that there was a group of
2 employees who got two weeks suspensions other than the four in
3 question?

4 A Yes.

5 Q About how many in total, including the four that we're
6 talking about today?

7 A There were seven total employees suspended.

8 Q And is it correct to say that there was a group of
9 employees that received final written warnings for the events?

10 A Correct.

11 Q About how many were those? Well, I guess if you subtract
12 35% of them.

13 A There were about 30 people who received final written
14 warnings.

15 Q Now, why did some employees get two week suspensions and
16 some employees get final written warnings?

17 A So the employees who received final written warnings were
18 schedule to work and had a valid business reason to be at our
19 location.

20 The employees who were suspended had no plausible reason
21 to be there other than to disrupt the business and prohibit us
22 from rolling our trucks that morning to meet customer
23 commitments.

24 Q If you could please turn over the documents you have
25 before you and I would like you to look at, and please take all

1 the time you need, to look at General Counsel's exhibits, 4, ,5
2 6 and 7.

3 And if you wouldn't mind, Ms. Ciliberti, while you're
4 looking at the documents if you could turn over the documents
5 that you're not looking at.

6 Can you identify these documents?

7 A Document 4, the first page is the memo that was issued to
8 Azeam Ali.

9 It is the disciplinary notice that he was being suspended
10 for two weeks effective May 22nd, for his role in the work
11 stoppage in violation of our collective bargaining agreement.

12 And then attached to that is the actual corrective action
13 form.

14 Document 5 is the same type of document issued to Diana
15 Cabrera.

16 Document 6 is the document issued to Ralph Anderson for
17 his participation in the strike.

18 And document 7 is the disciplinary action issued to Frank
19 Tavares for his participation in the strike.

20 (General Counsel's Exhibit GC-4 through General Counsel's
21 Exhibit GC-7 identified)

22 Q Now, looking at these documents, do you see that in the
23 first page of all these documents in the second paragraph of
24 each of these documents, it has the word instigate.

25 A Yes.

1 Q Okay. In this context based on the company's decision to
2 issue this document, what does instigate mean?

3 MR. MARGOLIS: I'm going to object. There's no
4 testimony that this witness is the author of the document.

5 JUDGE ROSAS: Hold on. Can I have a set of
6 documents?

7 MR. ROSE: Sorry.

8 JUDGE ROSAS: While you're doing that, there's an
9 objection on foundation grounds.

10 MR. ROSE: I'll withdraw the question. I'll come
11 back to the witness on it.

12 BY MR. ROSE:

13 Q Do you still have the documents before you?

14 A I do.

15 Q Do you know who authored these documents? The first page
16 of each exhibit, 4, 5, 6, 7.

17 A There were a group of people who would have weighed in on
18 the language that was used in the corrective action that was
19 issued.

20 Q Were you one of those people that weighed in?

21 A Yes, I was.

22 Q Okay. So before these were issued, you were fully
23 familiar with the language of the letters, is that correct?

24 A Correct.

25 Q Okay. So then I'll ask the question. In the context of

1 these letters, what does instigate mean?

2 A In this circumstance it was encouraging the participation
3 and participating in the work stoppage in front of Paidge
4 Avenue that morning.

5 MR. ROSE: Your Honor, I'd like to offer into
6 evidence General Counsel's Exhibit 4, 5, 6 and 7.

7 JUDGE ROSAS: Any objection?

8 MR. MARGOLIS: No objection, Your Honor.

9 JUDGE ROSAS: General Counsel's 4 through 7 are
10 received.

11 (General Counsel's Exhibit GC-4 through General Counsel's
12 Exhibit GC-7 received)

13 BY MR. ROSE:

14 Q Ms. Ciliberti, if you could turn those documents over and
15 if you could collect from your pile General Counsel's Exhibits
16 8, 9 and 10.

17 And if you could identify those documents and please take
18 your time and look them over.

19 A These documents are the corrective actions issued to Joe
20 McGovern, Byron Yu and David Lopez for their participation in
21 the strike.

22 (General Counsel's Exhibit GC-8 through General Counsel's
23 Exhibit GC-10 identified)

24 MR. ROSE: Your Honor, I'd like to offer into
25 evidence General Counsel's 8, 9 and 10.

1 MR. MCGOVERN: No objection.

2 MR. MARGOLIS: No objection, Your Honor.

3 JUDGE ROSAS: General Counsel's 8 through 10 are
4 received.

5 (General Counsel's Exhibit GC-8 through General Counsel's
6 Exhibit GC-10 received)

7 BY MR. ROSE:

8 Q Okay. And if you could turn those last documents over I
9 showed you, and if you could please look at General Counsel's
10 11, 12 and 13.

11 Can you identify these documents?

12 A These are copies of the corrective actions issued to Marco
13 Mollico, Ahmad Wilson and Krystal Cakarison, documented final
14 written warnings issued to them for their participation in the
15 strike outside of Paidge Ave.

16 (General Counsel's Exhibit GC-11 through General Counsel's
17 Exhibit GC-13 identified)

18 Q Is it correct to say that these three people were
19 scheduled to work that day?

20 A Yes.

21 Q Now, if you could look, please, at General Counsel's 11
22 and General Counsel's 12, and if you could look, please, on the
23 document --

24 JUDGE ROSAS: Hold on, they're not in evidence before
25 we read from them.

1 MR. ROSE: Oh, forgive me.

2 JUDGE ROSAS: Is there going to be any objection?
3 You're offering them, right?

4 MR. ROSE: I'm offering them in the evidence doc,
5 Your Honor.

6 MR. MARGOLIS: No objection.

7 JUDGE ROSAS: Okay. General Counsel's 11 through 13?

8 MR. ROSE: 11, 12, 13, yes, Your Honor.

9 JUDGE ROSAS: Are received in evidence without
10 objection.

11 (General Counsel's Exhibit GC-11 through General Counsel's
12 Exhibit GC-13 received)

13 BY MR. ROSE:

14 Q If you could look at the bottom half of the first pages of
15 General Counsel's 11 and General Counsel 12. On 11 it says
16 Marco, and General Counsel 12 it says, Ahmad, and then in each
17 it says that this serves to notify.

18 It's the box at the bottom that says description of
19 violation. Forgive me, I should have --

20 A I see it.

21 Q Okay. Now, in that box that says description of the
22 violation, would you agree that the first three paragraphs are
23 identical?

24 A Yes.

25 Q Okay. But the fourth paragraph is not identical. Would

1 you agree with that?

2 A Yes.

3 Q GC-11 talks about Kronos. And what is Kronos?

4 A Time and attendance.

5 Q Your time and attendance?

6 A Mm mmm.

7 Q Okay. That's a computer program of some sort. Is that
8 correct?

9 A Correct.

10 Q So could you explain why the fourth paragraph in that box
11 on GC-11 is different then the paragraph on GC-12? The fourth
12 paragraph on GC-12 in that box?

13 A On GC-11 we note that Kronos records indicate Marco
14 Mollico reported to work late. For Ahmad Wilson, there is no
15 notation that he reported into work late.

16 Q Okay. And on GC-13, if you look down in the same box,
17 description of the violation, and if you see the third
18 paragraph in that, oh, I guess it would be the fourth paragraph
19 where it starts Kronos records but it's stricken, do you see
20 that?

21 A I do.

22 Q Okay. Do you have any, to your knowledge, can you explain
23 why that was stricken out?

24 MR. MARGOLIS: Your Honor, excuse me. I'm going to
25 object at this point. There's no allegation in the complaint

1 relating to any of these employees.

2 MR. ROSE: This --

3 JUDGE ROSAS: Do you want to make an offer outside of
4 the witnesses presence?

5 MR. ROSE: If you would prefer, Your Honor, it's very
6 simple. This is all one investigation, one event. And I want
7 to get the whole concept of it.

8 JUDGE ROSAS: What's the relevance?

9 MR. ROSE: Well, the relevance is to the -- a lot of
10 people were interviewed. There was a lot of conduct and a lot
11 of talk about participation.

12 Some of employees were given, well, some employees
13 were given more discipline than others and would like to know
14 why.

15 MR. MARGOLIS: I think the witness has already
16 answered that question.

17 MR. ROSE: Okay. Your Honor, I'd like to offer these
18 into evidence then. I think I already have and have they been
19 accepted?

20 MR. MCGOVERN: Yes.

21 JUDGE ROSAS: They have.

22 MR. ROSE: Okay.

23 BY MR. ROSE:

24 Q You can please turn them over. Now, is it correct to say,
25 Ms. Ciliberti, that the four suspensions of the four employees,

1 their suspensions were issued based on an investigation
2 conducted by the company?

3 A There were interviews conducted by the company, yes.

4 Q Okay. Would you be able to describe the evidence
5 collected in this investigation besides the -- I'm sorry, you
6 said the --

7 A The interviews.

8 Q The interviews. Any other evidence?

9 A So there were interview notes taken by each of the
10 interviewers of the comments the employees made during the
11 conversations.

12 Q Would you consider review of the security tape part of the
13 investigation?

14 A Yes.

15 Q And you would consider that part of the evidence that the
16 company used in the investigation to determine the suspensions?

17 A Correct.

18 Q Okay. I'd like to ask you about the interviews.

19 A Sure.

20 Q When did these interviews occur?

21 A I don't know the exact date. Shortly after the strike
22 took place by a few weeks.

23 Q Who conducted the interviews?

24 A Several representatives from human resources, as well as
25 present were department leaders, in addition to the shop

1 stewards being present as well.

2 Q Now, when I say conducted interviews, who asked the
3 questions in the interviews?

4 A The human resources leaders.

5 Q Could you name them, please?

6 A Mary Maldonado, Daymion Montanez, Luana Baker and myself.

7 Q Who's Ari Arison Norman?

8 A Arison Norman was a former member of the HR department.

9 He's no longer employed by Time Warner Cable.

10 Q Is the short version of his name R-E-A-R-I?

11 A Yes, it is.

12 Q Okay. And I'm sorry, did you say you also asked
13 questions?

14 A I did.

15 Q Now, is it correct to say that each of these, yourself and
16 the other managers took -- were assigned groups?

17 A Correct.

18 Q Of employees to ask questions of?

19 A Yes.

20 Q And other than the managers you mentioned other than
21 yourself, are they underneath you in the hierarchy of the
22 company?

23 A Yes.

24 Q They report to you?

25 A Yes, that's correct.

- 1 Q Do you know who conducted Ms. Cabrera's interview?
- 2 A I don't know off the top of my head, no.
- 3 Q Do you know how I would find out that information?
- 4 A Most likely it would be noted either on a spreadsheet that
- 5 may have been maintained or on interview notes, the document.
- 6 Q Okay. Do you know who interviewed Mr. Andersen?
- 7 A I believe Mary Maldonado did.
- 8 Q Mr. Ali?
- 9 A I believe that was Daymion Montanez.
- 10 Q Would you mind please spelling, if you can Daymion
- 11 Montanez's name?
- 12 A D-A-Y-M-I-O-N. M-O-N-T-A-N-E-Z.
- 13 Q And Mr. Tsavares' interviewer, do you know who that was?
- 14 A I believe it was Mary Maldonado.
- 15 Q Is it correct to say that the company devised a list of
- 16 questions to ask each interviewee during the interviews?
- 17 A Yes.
- 18 Q And when I say each interviewees, I mean all the
- 19 interviewees, not just the four in question.
- 20 A Correct.
- 21 Q Who devised this list?
- 22 A It was group effort.
- 23 Q Can you name the people in the group?
- 24 A I was part of the group. I believe Mary Maldonado was
- 25 part of that group.

1 The business leaders were part of that group as well as
2 our legal team.

3 Q Business leaders? Who are they?

4 A John Quigley, Greg Cory and we may have included Bill
5 Tyson.

6 Q Bill Tyson. What is his job title?

7 A He is currently the group vice president of business
8 services operations.

9 Q So to your knowledge, well, I'll ask you first, with
10 regard to the employees that you interviewed yourself, did you
11 ask all the employees the same questions from that list?

12 A Yes.

13 Q To your knowledge did the HR representatives under you ask
14 all employees the same questions from that list?

15 A That was the expectation that was set for all of us.

16 Q That was the directive given?

17 A Correct.

18 Q And to your knowledge, did the managers follow these
19 instructions?

20 A Yes.

21 Q There's no reason to believe that they didn't?

22 A No.

23 Q Now, were the HR managers tasked with writing down any
24 answers they were given after the questions were asked?

25 A Yes.

1 Q And did you do that personally with your questions?

2 A I did.

3 Q And these instructions to write down the answers, do you
4 have any reason to believe that the four managers underneath
5 you did not follow those instructions?

6 A I have no reason to believe they didn't follow
7 instructions.

8 Q Okay. If you can please look at General Counsel's GC-14,
9 15, 16 and 17. And take your time, please. Can you identify
10 these documents?

11 A These are the interview notes from the conversations with
12 Azeam Ali, Diana Cabrera, Ralph Anderson and Frank Tavares.

13 (General Counsel's Exhibit GC-14 through General Counsel's
14 Exhibit GC-17 identified)

15 Q Now, do you recognize the handwriting by any chance? Can
16 you identify the handwriting on any of these or all of these?

17 A Yes.

18 Q Okay. Let's take Azeam Ali. Oh, who's the handwriting?

19 A It appears to be Daymion Montanez.

20 Q Diana Cabrera? That was GC-15?

21 A Mary Maldonado.

22 Q Ralph Anderson, GC-16?

23 A Looks like Mary Maldonado's as well.

24 Q And GC-17?

25 A Mary Maldonado.

1 MR. ROSE: So, Your Honor, I'd like to offer these
2 into evidence as General Counsel's Exhibits 14 through 17.

3 MR. MCGOVERN: No objection.

4 MR. MARGOLIS: No objection. I would just note that
5 GC-15 is cutoff.

6 MR. ROSE: That's how I received it, Your Honor, from
7 the Respondent's production. If they want to give me a better
8 copy, I'd be happy to swap the pages.

9 JUDGE ROSAS: Any reason to doubt that?

10 MR. MARGOLIS: Any reason to doubt that we gave it
11 that --

12 JUDGE ROSAS: No, what he's representing. That it's
13 cutoff as far as the form is concerned.

14 You'll have the opportunity if you have a more
15 complete form to offer that if you want. So any objection
16 other than that?

17 MR. MARGOLIS: No objection.

18 JUDGE ROSAS: All right. General Counsel's 14
19 through 17 are received.

20 (General Counsel's Exhibit GC-14 through General Counsel's
21 Exhibit GC-17 received)

22 Q So if you could please look at GC-14. Well, actually if
23 you can bring your attention to all of them, and please take
24 your time to answer the question.

25 Is it correct to say that the handwritten portions of

1 these pages are the answers to the questions that the relevant
2 manager asked the interviewer/interviewee?

3 A Yes.

4 Q So for example, if you look at GC-14, do you see the
5 question, who do you report to?

6 A Yes.

7 Q Okay. And next it says, does that say Justin Finnerty?

8 A Correct.

9 Q So that would be the answer to the question, who do you
10 report to?

11 A Correct.

12 Q And if you could look at GC-15, please. And if you could
13 please look at the second page of that.

14 Do you see the first question, have you reviewed the CBA?

15 A Yes.

16 Q Do you see that? And next is handwritten no?

17 A Correct.

18 Q Does that mean the no is the answer that the manager wrote
19 down after he or she asked the question have you reviewed the
20 CBA?

21 A Yes.

22 Q Now, during the company's investigation regarding what,
23 whether to give discipline or not, did the company draw
24 conclusions regarding who or what caused blocking in the
25 street?

1 A On the video we were able to observe that there were cars
2 parked haphazardly in addition to a large mob of employees
3 congregated outside of our location which prohibited us from
4 rolling out our trucks.

5 MR. ROSE: Your Honor, I forgot to attach one exhibit
6 to the last of this. May I approach and pass out one exhibit?
7 Thank you, Your Honor.

8 Q Do you recognize, well look at the first page of the two
9 page document I handed to you now. Do you recognize the first
10 page?

11 A Yes.

12 Q What is it, please?

13 A It appears to be an aerial view of our Paidge Avenue
14 location.

15 Q And if you look at the second page which is marked General
16 Counsel's 18(b), would you agree that that's the same
17 photograph except that this 18(b) has street names on it and
18 numbers that appear overlaid on it?

19 A Mine is notated 8(b).

20 Q 18(b).

21 A 8.

22 Q Oh, I'm sorry, it should be 18. I apologize. Forgive me.
23 I'd be happy to change that for you if you like.

24 MR. ROSE: May I approach, Your Honor?

25 Q There you go, sorry about that. Would you like me to

1 repeat the question?

2 A Please.

3 Q Okay. So 18(b), and if you compare 18(b) to 18(a), would
4 you agree that 18(b) is the same aerial photograph, except that
5 it includes street names and numbers overlaid on the
6 photograph?

7 A Correct.

8 (General Counsel's Exhibit GC-18(a) and General Counsel's
9 Exhibit GC-18(b) identified)

10 MR. ROSE: Your Honor, I offer this into evidence as
11 General Counsel's Exhibit GC-18 (a) and (B).

12 MR. MCGOVERN: No objection.

13 JUDGE ROSAS: Objection, voir dire.

14 MR. MARGOLIS: Your Honor, the genesis of the numbers
15 written on 18(b) is not an explained.

16 JUDGE ROSAS: I assume that's for demonstrative
17 purposes, later on?

18 MR. ROSE: Precisely, Your Honor. This is a
19 demonstrative exhibit.

20 JUDGE ROSAS: All right.

21 MR. MARGOLIS: No objections.

22 JUDGE ROSAS: Okay. General Counsel 18(a) and (b) are
23 received.

24 (General Counsel's Exhibit GC-18(a) and General Counsel's
25 Exhibit GC-18(b) received)

1 BY MR. ROSE:

2 Q Now, if you look, please, at 18(b), would you agree that
3 the numbers that appear there, numbers 1 through 8 appear above
4 points of ingress and egress on Paidge Avenue?

5 MR. MARGOLIS: Objection, Your Honor.

6 JUDGE ROSAS: Repeat the question.

7 Q Would you agree that the numbers appearing, numbers 1
8 through 8 appear above points of ingress and egress on Paidge
9 Avenue?

10 JUDGE ROSAS: What's the basis?

11 MR. MARGOLIS: Lack of foundation, Your Honor. This
12 witness is an HR person who testified.

13 JUDGE ROSAS: If you know, overruled.

14 THE WITNESS: I'm not familiar with every single one
15 of these locations that you've numbered here.

16 Q Okay. Thank you.

17 JUDGE ROSAS: How much more do you have with this
18 witness?

19 MR. ROSE: Well, I'm going into the next, what time
20 is it? I have about 45 minutes.

21 JUDGE ROSAS: Okay. Let's take a five-minute break
22 and go to the restroom. Do not talk to anybody, okay?

23 (Whereupon, a brief recess was taken)

24 JUDGE ROSAS: On the record.

25 BY MR. ROSE:

1 Q Ms. Ciliberti, if I showed you the security video.

2 A Yes.

3 Q Would you be able to identify who or what was causing
4 blocking based on the investigation that the company conducted?

5 A I may be able to.

6 Q Okay.

7 MR. ROSE: Your Honor, I would like to show the
8 security video. I have a set up right there.

9 It would be on that. I would have to move over to
10 that little table, pop my laptop down.

11 It will just take about a minute. I also have
12 exhibits associated with them.

13 And I represent that this video was copied from the
14 video attached as the exhibits of the motion for summary
15 judgment.

16 MR. MARGOLIS: Are you planning to show the whole
17 thing?

18 MR. ROSE: Your Honor, I'm going to skip a little
19 bit. I'm also going to do mass motion through parts that I
20 don't necessarily.

21 JUDGE ROSAS: The entirety's going into evidence.

22 MR. ROSE: But the entirety's going into evidence.

23 JUDGE ROSAS: Whatever you guys want to do. Are you
24 going to be asking the witness any questions during the video?

25 MR. ROSE: I am, yes.

1 JUDGE ROSAS: Are you going to be stopping it?

2 MR. ROSE: Yes.

3 JUDGE ROSAS: And asking questions?

4 MR. ROSE: I am.

5 JUDGE ROSAS: Okay. So I just want to make sure that
6 it's --

7 MR. ROSE: Yeah. We'll make sure that --

8 JUDGE ROSAS: Okay.

9 MR. ROSE: -- it's visually available to her.

10 MR. MCGOVERN: Will you be speaking from there or
11 speaking from there?

12 MR. ROSE: Oh, yes, I'm sorry, I forgot about that
13 part. I will be speaking from there.

14 JUDGE ROSAS: Okay. He just needs to speak loud,
15 right? Can it be turned?

16 MR. ROSE: Yes, it can, Your Honor.

17 BY MR. ROSE:

18 Q Other witnesses copies, if you will turn that over please.

19 JUDGE ROSAS: Why don't we go off the record.

20 (Whereupon, a brief recess was taken)

21 BY MR. ROSE:

22 Q Ms. Ciliberti, do you have a good view of what's on the
23 screen?

24 A Yes, I do.

25 Q Do you recognize what's on the screen?

1 A Yes.

2 Q What is it?

3 A That is Paidge Avenue just outside of our location.

4 Q Actually if you could look at General Counsel's Exhibit
5 18, please.

6 A 18?

7 Q 18, yes. If you could look at 18(b) if you don't mind.
8 if you can, if not that's fine.

9 Will you know where by looking at 18(b) where this flag
10 is, this flagpole and flag is on the building under Paidge
11 Avenue?

12 A I'm sorry I don't see the flagpole or the flag, so no.

13 Q Okay. That's fine. Do you know where the security camera
14 on Paidge Avenue was located?

15 A No.

16 Q You don't. Okay. Fine. You could put 18 down and turn
17 it over. By the way, does this appear to the security video
18 that you were talking about in your testimony earlier?

19 A It appears to be a frame from that video, yes.

20 Q And if I played it, does that appear to you to be the
21 security video?

22 A Yes.

23 (General Counsel's Exhibit GC-29 identified)

24 Q Okay.

25 MR. ROSE: Now, Your Honor --

1 JUDGE ROSAS: General Counsel, hold on. General
2 Counsel's 29 is the DVD?

3 MR. ROSE: Yes. 29. Sorry it's out of order, Your
4 Honor.

5 JUDGE ROSAS: You're saying was provided to you by
6 company in which you made a duplicate?

7 MR. ROSE: It is a copy of the security video
8 attached to the exhibit to the motion of summary judgment.

9 JUDGE ROSAS: Okay. Any objection?

10 MR. MARGOLIS: Okay. General Counsel's 29 is
11 received.

12 (General Counsel's Exhibit GC-29 received)

13 BY MR. ROSE:

14 Q Okay. I'm going to skip forward a little bit at a time.
15 I'm going to skip a little bit in time.

16 Sometimes I'm going to fast forward it and I'm going to
17 stop at certain places. I'm not going to show you the whole
18 video.

19 By the way, if you can just confirm the 2014 4, 2, 6, 17,
20 16, that's that date and time stamped, is that correct?

21 A Yes.

22 Q I'm going to play this for about a minute and a half. And
23 then I'm going to stop it at a certain point in time and ask
24 you questions, with Your Honor's permission.

25 MR. ROSE: Now, if you'll permit me to explain

1 something and Mr. Margolis can confirm this, I've noticed on
2 the tape that at one point the timestamp freezes, however, the
3 video continues to play if you looked down at the bottom number
4 here.

5 Currently it says 2630 down at the bottom. I'm
6 assuming that's something with the security video. It just
7 freezes up on the clock, it skips to another point in time.

8 JUDGE ROSAS: Even though on the screen it shows
9 what, Counsel? It shows 6:24?

10 MR. ROSE: It shows 6:24, but if you look, you see at
11 the bottom, it says 2632, 26, right there at the bottom.

12 That means it's continuing to play. But the security
13 video apparently stops. But it keeps time and then skips to
14 the new time.

15 Okay. So I'm going to go frame by frame here more or
16 less and stop it at a particular point in time and then ask you
17 questions.

18 JUDGE ROSAS: Counsel, is it your understanding that
19 the time indicator on the bottom will catch up or that the time
20 indicator on the top will catch up or it won't?

21 MR. ROSE: It's hard to explain. And, Mr. Margolis,
22 if you could help me, because it's a copy of Mr. Margolis'
23 exhibit.

24 The timestamp, it seems that the security video
25 itself when it's recording stops. But the computer file still

1 marks time.

2 So let's say it stops at 6 minutes and 20 seconds.

3 JUDGE ROSAS: Let me stop you for a moment.

4 MR. ROSE: Okay.

5 JUDGE ROSAS: Unless it's an issue, and needs further
6 explanation, it's just so the record is clear, when you're
7 asking questions, you're going to be referring to the time
8 indicator at the bottom?

9 MR. ROSE: No, no, at the top. The timestamp at the
10 top,.

11 JUDGE ROSAS: Well, just make clear so everybody
12 understands when we stop.

13 MR. ROSE: Oh, absolutely.

14 MR. MARGOLIS: Well, while we're on the subject, you
15 referred to 6:25 which I don't think is an accurate count.

16 MR. ROSE: Oh, I'm sorry. I think I referred to 26
17 minutes.

18 MR. MARGOLIS: It's a time of day stamp.

19 MR. ROSE: It's a time and day stamp.

20 BY MR. ROSE:

21 Q This is, Ms. Ciliberti, based on the investigation of the
22 company, this is the security video.

23 Is what you're looking at now 6:25 a.m. timestamp on the
24 security video?

25 A Yes.

1 Q Okay. On October 2nd, 2014.

2 A Not October 2nd.

3 Q I mean, April 2nd, 2014. I'm sorry about that. Thank you
4 for correcting me.

5 Okay. So if you could, please, Ms. Ciliberti, if you
6 could please look at the exhibit. It's GC Exhibit 19(a) and
7 attached to it is 19(b).

8 Now, if you could please look at 19(a), would you agree
9 that 19(a) is a screenshot of what you're looking at here on
10 the screen at 6:25 a.m. and zero seconds, according to the
11 timestamp?

12 A It appears to be, yes.

13 Q Okay. And if you look at GC-19(b) would you agree that
14 it's the same screenshot except that there is a number
15 overlaying a car in the street?

16 A Yes.

17 (General Counsel's Exhibit GC-19(a) and General Counsel's
18 Exhibit GC-19(b) identified)

19 MR. MARGOLIS: Your Honor, just in terms of
20 expediting things, would there be a way to have a simple
21 stipulation?

22 I'm going to assume, you know, I'll take you at your
23 word that these stills are taken from the security video at the
24 times indicated?

25 MR. ROSE: Okay.

1 MR. MARGOLIS: And I don't think there's a need to
2 ask the witness that, if that helps.

3 MR. ROSE: Okay. I'll accept that stipulation.
4 Okay.

5 Then I offer this, Your Honor, into evidence as GC
6 19(a) and (b).

7 JUDGE ROSAS: Any objection?

8 MR. MARGOLIS: No objection and my offer related to
9 all photos, if that helps.

10 JUDGE ROSAS: Okay. General Counsel's 19(a) and
11 19(b) as is the case where I assume all of the rest to follow
12 will be because that particular additional sheet has a marking
13 for demonstrative purposes for referencing.

14 Okay. With that understanding, I'll receive General
15 Counsel's 19.

16 (General Counsel's Exhibit GC-19(a) and General Counsel's
17 Exhibit 19(b) received)

18 BY MR. ROSE:

19 Q If you could please look, Ms. Ciliberti, as General
20 Counsel's 19(b). And if you can please look at the car with
21 the number 1 on it.

22 Based on the company's investigation, did the company
23 determine who placed that car there on the street?

24 A Yes.

25 Q Who?

1 A Derek Jordan.

2 Q Who is Derek Jordan?

3 A The business rep from Local 3.

4 Q Based on the company's investigation, did Diana Cabrera
5 have any -- did the company determine whether Diana Cabrera
6 placed that car in the street?

7 A No.

8 Q No. How about Mr. Tsavaris?

9 MR. MARGOLIS: Your Honor, I'm going to object to
10 this point.

11 JUDGE ROSAS: What's the basis?

12 MR. MARGOLIS: The allegation of the complaint is
13 very simple. It's that individuals were suspended because they
14 participated in a "job action."

15 The, what is referred to as the job action began when
16 this car arrived at about 6:23 a.m. and it ended at about 8:00
17 a.m.

18 So that's what's alleged in the complaint. So it's
19 not appropriate to take a specific moment during the course of
20 that job action and say, did this person participate in this
21 moment of the job actually.

22 The allegation is they were suspended because they
23 participated in the job action. The job action is not 6:25
24 a.m. exactly. The job action is a much broader period of time.

25 JUDGE ROSAS: I'm going to take the question. The

1 question is whether or not the discriminate had anything to do
2 with the positioning of the car at that location at that time.

3 MR. ROSE: Yes, Your Honor.

4 JUDGE ROSAS: Simple question. Okay. I'll determine
5 relevance and weight if any, with respect to the ultimate
6 determination conclusion of law to be reached in this case at
7 the appropriate time. Overruled. You can answer.

8 BY MR. ROSE:

9 Q Ms. Ciliberti, would you like me to repeat a question or
10 withdraw and ask another one?

11 A No, you can repeat the question.

12 Q Okay. Did the company's investigation determine whether
13 Diane Cabrera had placed that car there that is marked as #1?

14 A No, they did not determine that Diana Cabrera placed the
15 car there.

16 Q Did they determine that Mr. Tsavaris placed the car there?

17 A No.

18 Q Did it determine that Mr. Anderson or Mr. Ali placed the
19 car there?

20 A No.

21 MR. ROSE: Okay. I'm going to play this with Your
22 Honor's permission at regular speed for the next one minute and
23 seventeen seconds.

24 (VIDEO BEING PLAYED)

25 BY MR. ROSE:

1 Q Okay. Ms. Ciliberti, if you could please look at General
2 Counsel's 20(a) and 20(b).

3 MR. ROSE: Your Honor, I offered this into evidence
4 based on Mr. Margolis's prior stipulation with regards to the
5 photographs and the demonstrative evidence.

6 (General Counsel's Exhibit GC-20(a) and General Counsel's
7 Exhibit 20(b) identified)

8 MR. MCGOVERN: No objection.

9 MR. MARGOLIS: No objection.

10 JUDGE ROSAS: General Counsel 20 is received.

11 (General Counsel's Exhibit GC-20(a) and General Counsel's
12 Exhibit 20(b) received)

13 Q Ms. Ciliberti, would you please look at General Counsel's
14 20(b) which is the second day. If you will look at the car
15 with the number 2 on it.

16 Did the company's investigation determine who placed that
17 car there?

18 A So I'm going to have to apologize and ask to be able to
19 watch that segment again, because I need to see where that car
20 originally was placed and whether it was moved.

21 Q Okay. I will go back then to 6:25 and replay it for you.

22 A Thank you.

23 Q As best I can. Okay. Is that good for you, Ms.
24 Ciliberti?

25 A Yes.

1 Q Okay. So it's playing for you. Ms. Ciliberti, was that
2 sufficient video for you?

3 A Yes, thank you.

4 Q Okay. So if you go back to General Counsel's Exhibit GC
5 20(b), and you look at the car marked 2, did the company's
6 investigation conclude who placed that car there?

7 A Yes.

8 Q Who.

9 A Byron Yew.

10 Q Who is Byron Yew?

11 A Technician with Warner Cable.

12 Q Was he a technician that received a two-week suspension?

13 A He was.

14 Q And I'll ask the same questions. Did the company
15 determine if any of the four employees in question, Tsavaris,
16 Ali, Andersen and Cabrera, did the company determine whether
17 any of them placed that car there?

18 A No.

19 Q Now, I'm going to play at fast speed, because the next
20 place I want to go is about five minutes away. Okay. If you
21 could please look, Ms. Ciliberti at General Counsel's Exhibit
22 21(a) and 21(b).

23 (General Counsel's Exhibit GC-21(a) and General Counsel's
24 Exhibit 21(b) identified)

25 MR. ROSE: Your Honor, I offer this into evidence

1 based on Mr. Margolis's prior stipulation.

2 MR. MCGOVERN: No objection.

3 MR. MARGOLIS: No objection.

4 JUDGE ROSAS: General Counsel's 21 received.

5 (General Counsel's Exhibit GC-21(a) and General Counsel's

6 Exhibit 21(b) received)

7 BY MR. ROSE:

8 Q If you could look, Ms. Ciliberti at General Counsel's
9 Exhibit 21(b) and if you could look at the car that's marked
10 number 3.

11 Did the company's investigation determine who placed that
12 car there?

13 A No.

14 Q Okay. I'm going to play this at normal speed at about 1
15 minute and 45 seconds.

16 (VIDEO BEING PLAYED)

17 BY MR. ROSE:

18 Q Okay. Ms. Ciliberti, can you please look at General
19 Counsel's Exhibit 22(a) and 22(b)?

20 (General Counsel's Exhibit GC-22(a) through General Counsel's
21 Exhibit 22(b) identified)

22 MR. ROSE: Your Honor, I offer this as an evidence as
23 General Counsel's Exhibit 22 based on the prior stipulation of
24 Mr. Margolis regarding the photographs.

25 MR. MCGOVERN: No objection.

1 MR. MARGOLIS: No objection. I think it would be
2 helpful for the clarity of the record if you recite the time.

3 MR. ROSE: Okay.

4 MR. MARGOLIS: When you offer each exhibit.

5 MR. ROSE: All right. The timestamp is 6:33 a.m. and
6 zero seconds for GC-22.

7 JUDGE ROSAS: General Counsel's 22 is received.

8 (General Counsel's Exhibit GC-22(a) through General Counsel's
9 Exhibit General Counsel-22(b) received)

10 BY MR. ROSE:

11 Q Ms. Ciliberti, if I could please ask you to look at
12 General Counsel's Exhibit 22(b). And if you could please look
13 at the car that's marked 4. Okay?

14 A Yes.

15 Q Did the Company's investigation determined who placed that
16 car there?

17 A No.

18 Q My next stopping point will be about 45 seconds into this,
19 so I'm going to play this at normal speed.

20 (VIDEO BEING PLAYED)

21 MR. ROSE: Your Honor, I offer this into evidence as
22 General Counsel's Exhibit 23(a) and (b). The timestamp on it
23 is 6:33 a.m. and 49 seconds.

24 (General Counsel's Exhibit GC-23(a) through General Counsel's
25 Exhibit 23(b) identified)

1 And I offer it based on Mr. Margolis's prior
2 stipulation.

3 MR. MCGOVERN: No objection.

4 MR. MARGOLIS: No objection.

5 JUDGE ROSAS: General Counsel 23 is received into
6 evidence.

7 (General Counsel's Exhibit GC-23(a) through General Counsel's
8 Exhibit 23(b) received)

9 BY MR. ROSE:

10 Q Ms. Ciliberti, can you please look at General Counsel's
11 Exhibit 23(b).

12 A Yes.

13 Q Do you see the cars there marked 5, 6 and 7?

14 A I do.

15 Q Did the investigation of the company determine who
16 replaced car 5 in that position?

17 A No.

18 Q Did the company who placed car 6 in that position?

19 A No.

20 Q Did the company determine who placed car 7 in that
21 position?

22 A No.

23 Q Okay. So the next photograph on the tape I want to go to
24 is on the next computer file. This represent and I believe Mr.
25 Margolis will agree that this tape, this particular computer

1 file ends at about 6:59 a.m.

2 Would you like to see the rest of the tape? Would that
3 help you? Or I can play it at fast speed, Ms. Ciliberti?

4 A I may ask you play it dependent on the question you have.

5 Q All right. Fair enough. All right.

6 I'm going to open up the next video tape. I'm betraying
7 my age by calling it a tape.

8 MR. MARGOLIS: Again, just for clarity of the record,
9 the security video of the entire series of events is broken
10 down into three consecutive files.

11 So that's why Mr. Rose is proceeding to another file.
12 It's because it's broken up into three consecutive pieces.

13 MR. ROSE: Thank you, Mr. Margolis for that. Okay.
14 I'm going to play it at fast speed.

15 (VIDEO BEING PLAYED)

16 BY MR. ROSE:

17 Q I'm going to stop right here for a moment. I have a
18 question for you, Ms. Ciliberti.

19 Based on your memory of the tape roll, what you just saw
20 now, the camera have appeared to have moved or zoomed in. Was
21 that your memory of the tape?

22 Do you recall from your review of the tape and you agree
23 that's what's happening?

24 A Yes.

25 Q Do you know who is doing that moving and zooming at the

1 time?

2 A I don't recall.

3 Q You don't recall. Okay.

4 JUDGE ROSAS: This is a point where it shows at the
5 7:00 hour, 20 minutes and 47 seconds. Is that correct?

6 MR. MARGOLIS: Correct.

7 MR. ROSE: Thank you, Your Honor.

8 (VIDEO BEING PLAYED)

9 MR. ROSE: I'm going to stop here and let it play
10 until the next point in time I intend to stop it which will be
11 about a minute and a half.

12 BY MR. ROSE:

13 Q Okay. I've stopped this at 7:33 a.m. and 25 seconds.
14 And, Mr. Ciliberti, if you could please look at GC-24.

15 (General Counsel's Exhibit GC-24 identified)

16 MR. ROSE: And I offer this into evidence based on
17 Mr. Margolis's prior stipulation.

18 MR. MCGOVERN: No objection.

19 MR. MARGOLIS: All right. No objection, except this
20 still seems to be much less clear than the video.

21 JUDGE ROSAS: I have the benefit of both for the
22 record. General Counsel's 24 is received.

23 (General Counsel's Exhibit GC-24 received)

24 BY MR. ROSE:

25 Q Ms. Ciliberti, looking at GC-24, based on the company's

1 investigation, did the company conclude what this is depicting?

2 A This is a clear blockade of people in vehicles preventing
3 us from rolling our trucks out of any one of the driver's that
4 we had access to.

5 Q Is this being mobbed that you referred to in your prior
6 testimony?

7 A This is part of the gathering. I believe there were even
8 more people than that, I'm thinking.

9 MR. ROSE: So the next place I want to stop is about
10 10 minutes. And I will play it at a faster speed to get there.

11 (VIDEO BEING PLAYED)

12 Q Okay. Mc. Ciliberti, could you please look at GC-25?
13 I've stopped this at 7:43 a.m. and 4 seconds.

14 (General Counsel's Exhibit GC-25 identified)

15 MR. ROSE: And I offer GC-25 into evidence based on
16 Mr. Margolis's prior stipulation.

17 MR. MCGOVERN: No objection.

18 MR. MARGOLIS: No objection.

19 JUDGE ROSAS: General Counsel's 25 received.

20 (General Counsel's Exhibit GC-25 received)

21 Q If you look at GC-25, do you see the red gentleman with
22 the red hat in the middle?

23 A I see somebody with a red hat in the middle.

24 Q And right above that red hat's head is a male, an African
25 American male. Do you see that?

- 1 A Yes.
- 2 Q Did the company during its investigation determine who
- 3 that was?
- 4 A That's Derek Jordan.
- 5 Q And you met Derek Jordan before?
- 6 A Yes.
- 7 Q And you recognize him?
- 8 A I do.
- 9 Q Okay. Is Phil Papale in this photograph?
- 10 A He is.
- 11 Q Okay. Papale is spelled P-A-P-A-L-E?
- 12 A Correct.
- 13 Q Okay. And who is Phil Papale?
- 14 A Phil was an employee at Time Warner Cable. He was also a
- 15 steward at the time of this transaction.
- 16 Q Okay. And if you see the top, the left hand corner of
- 17 this page, it says 2014.
- 18 A Correct.
- 19 Q And there's someone's head right below. And then there's
- 20 another person's head below that head. Is that Phil Papale?
- 21 A You see a green shirt collar?
- 22 Q Yes.
- 23 A A blue jacket, slightly balding head and a goatee, yes.
- 24 That's Phil Papale.
- 25 Q Okay. If you look over to the other end of the photo, do

1 you see a gentleman with white hair?

2 A Correct.

3 Q Did your investigation determine who that was?

4 A Well, he surmised his name as Sean, an employee of Local

5 3. But he is not employed by Time Warner Cable.

6 Q Would he be a union representative? Is that --

7 A That's what we believe him to be, yes.

8 Q Thank you. All right. I have one last place to go. And

9 I will speed it up to get there.

10 (VIDEO BEING PLAYED)

11 BY MR. ROSE:

12 Q I've stopped at 7:59 a.m. and 6 seconds. If you could,

13 please, Ms. Ciliberti look at GC-26.

14 (General Counsel's Exhibit GC-26 identified)

15 MR. ROSE: Your Honor, I offer this into evidence

16 based on Mr. Margolis's prior stipulation.

17 MR. MCGOVERN: No objection.

18 MR. MARGOLIS: No objection.

19 JUDGE ROSAS: General Counsel's 26 received into

20 evidence.

21 (General Counsel's Exhibit GC-26 received)

22 BY MR. ROSE:

23 Q Ms. Ciliberti, looking at this photograph, would you agree

24 that this shows the crowd that you saw in the prior photo

25 dispersing?

1 A The crowd is dispersing, however, the trucks are still
2 blocked up.

3 Q Right. Based on the company's investigation, I could show
4 you the video, if you'd like. Is it true that about two
5 minutes later the cars in the middle of the street were moved
6 and traffic flowed on the street normally?

7 A I would like to see the video.

8 Q I will show that to you. Okay. I'm now going to the
9 third computer file and it starts at about 7:59 and 20 seconds.
10 And I'm playing it at normal speed.

11 (VIDEO BEING PLAYED)

12 MR. ROSE: Again, this is not actually -- the
13 computer file is not stalled. it's actually the video, the
14 security video that stopped at this particular point in time.

15 You'll see eventually we'll pick up. The timestamps
16 on top of the picture. Okay. I'm going to stop this at 8:01
17 a.m. and 15 seconds.

18 BY MR. ROSE:

19 Q Would you agree at this point traffic is flowing freely?

20 A No. It still appears to be congested.

21 Q Still appears to be congested --

22 A Paidge and Provost Avenue.

23 Q Okay. Understood.

24 (VIDEO BEING PLAYED)

25 BY MR. ROSE:

1 Q How about at this point at 8:02 a.m. and 35 seconds?

2 A The cars are starting to leave.

3 Q The cars are starting to leave.

4 MR. ROSE: I have no questions on the video, Your
5 Honor. I would like to go back to my seat. I have a few more
6 questions for the witness.

7 MR. MARGOLIS: Your Honor, did we have the video
8 admitted already?

9 JUDGE ROSAS: General Counsel's 29 is in evidence.

10 MR. MARGOLIS: Thank you.

11 BY MR. ROSE:

12 Q If I can go a little bit out of order and ask you to look
13 at General Counsel's Exhibit 34.

14 MR. MARGOLIS: I don't believe we have a copy of
15 that.

16 MR. ROSE: You don't, I'm sorry. Sorry your numbers
17 are out of order.

18 MR. MARGOLIS: All right. Thank you.

19 BY MR. ROSE:

20 Q Are you looking, Ms. Ciliberti, at General Counsel's
21 Exhibit 34?

22 A Yes.

23 Q You recognize this?

24 A It's the flyer that says work safe.

25 Q Did the company determine whether this flyer appeared in

1 the street on April 2nd, 2014?

2 A I don't recall.

3 Q If you could please look at General Counsel's Exhibit 30.

4 A 30?

5 Q Yes. I'm sorry that it's out of order. Same question.

6 Did the company's investigation determine that this flyer up
7 here on the street being passed around on April 2nd?

8 A There was a flyer being distributed about Weingarten
9 Rights. I don't know if this is the exact flyer.

10 Q Okay. Thank you. I won't offer this into evidence right
11 now.

12 If you could please look, Ms. Ciliberti at General
13 Counsel's Exhibit 27. And I want to ask you, do you recognize
14 that?

15 A So this is an email?

16 Q I'm asking you.

17 MR. MARGOLIS: Is there a question?

18 MR. ROSE: I asked if the witness recognized it.

19 THE WITNESS: Well, I recognize it to be an email.

20 Apparently I was one of the recipients of the March 12th, 4:56
21 p.m. email.

22 But this is an email that Phil Papale forwarded to
23 his personal email account from his company account.

24 (General Counsel's Exhibit GC-27 identified)

25 MR. ROSE: Your Honor, I would like to stipulate this

1 into evidence. This is a company record and actually I took it
2 from one of the company's exhibits in three point lawsuit.

3 JUDGE ROSAS: Any objection?

4 MR. MCGOVERN: No objection.

5 MR. MARGOLIS: Relevance, Your Honor. This is dated
6 March 12th which is weeks before the events in question.

7 There's no allegation in the complaint relating to
8 Phil Papale. So we're going to object.

9 JUDGE ROSAS: Do we need to have a witness step out
10 in terms of the proffer?

11 MR. ROSE: No, Your Honor.

12 JUDGE ROSAS: Okay.

13 MR. ROSE: As I mentioned, Your Honor, there were
14 predicate events to the impetus to the Union's activity on
15 April 2nd.

16 This demonstrates that there was agreements filed on
17 March 12th regarding the tools.

18 MR. MARGOLIS: May I be heard, Your Honor? Whether
19 they were predicate events, Your Honor, it's not a material
20 issue before you.

21 The issue before you is whether the "job action"
22 defined as the conduct shown on the video from around 6:20 a.m.
23 to about 8:00 a.m. is or is not conduct protected by the act.

24 Whether there was a grievance filed on March 12th
25 which is the only stated reason that this document's being

1 offered, does not fare in any way on that issue which is before
2 you.

3 JUDGE ROSAS: Okay.

4 MR. ROSE: So in the end I shouldn't give it any
5 weight, right?

6 MR. MARGOLIS: Well, we don't think it's relevant,
7 Your Honor. We don't think it gets to the question.

8 JUDGE ROSAS: Right. Okay. Overruled. I'll receive
9 General Counsel's 27.

10 (General Counsel's Exhibit GC-27 received)

11 BY MR. ROSE:

12 Q And if you go into General Counsel's Exhibit 28 and I want
13 to ask you if you recognize the document.

14 A This appears to be a corrective action issued to Phil
15 Papale.

16 (General Counsel's Exhibit GC-28 identified)

17 MR. ROSE: Your Honor, I'd like to offer this into
18 evidence as General Counsel's Exhibit 28.

19 MR. MCGOVERN: No objection.

20 JUDGE ROSAS: Same objection?

21 MR. MARGOLIS: Same objection. And in addition, Your
22 Honor, this corrective action aside from lack of relevance, was
23 the subject of a grievance.

24 And the grievance was settled without admission of
25 fault by the part of the company. So whatever purposes this is

1 intended to serve, it has no possible relevance to the only
2 issue.

3 MR. ROSE: Your Honor, this activity on April 2nd, did
4 not occur in a vacuum. It would benefit the record. And I
5 think it's relevant to show.

6 JUDGE ROSAS: Relevant background?

7 MR. ROSE: Yes.

8 JUDGE ROSAS: Okay. Overruled.

9 (General Counsel's Exhibit GC-28 received)

10 JUDGE ROSAS: Again, you'll be able to argue as to
11 the way that Counsel should or should not be given to it.

12 And whether or not in fact whether I should strike
13 the exhibit, you'll be entitled to break that.

14 MR. MARGOLIS: Thank you.

15 JUDGE ROSAS: Okay. But you got to have a record.

16 And again, unless I'm absolutely satisfied that
17 something has no plausible connection to the ultimate findings
18 that I need to make in this case, I need to be very cautious,
19 okay?

20 In what I keep out of the record at this point. And
21 let me also just say that there are a lot of legal issues that
22 are at play here and I can't -- I haven't heard anything that
23 tells me right off the bat that there is issue preclusion in
24 any respect with respect to the findings and conclusions that I
25 need to make in this case.

1 That may ultimately be the case based on the law,
2 based on some deference that I may or may not give a prior
3 proceeding. I'm entitled to do that.

4 We don't usually do that, but it's been done. Again,
5 what I'm going to do is anybody's guess at the moment, okay?

6 MR. ROSE: I have no more questions for the witness
7 at this time, Your Honor.

8 JUDGE ROSAS: Charging Party, any follow up?

9 MR. MCGOVERN: No, Your Honor.

10 JUDGE ROSAS: Okay. You have cross examination for
11 the witness?

12 MR. MARGOLIS: No, Your Honor, we of course reserve
13 the right to call her on Respondent's case.

14 JUDGE ROSAS: Okay. Thank you, ma'am. You are
15 excused.

16 Please do not discuss your testimony with anyone
17 until you are advised otherwise by Counsel, okay? Thank you
18 very much.

19 All right. Let's go off the record.

20 (Whereupon, a brief recess was taken)

21 JUDGE ROSAS: On the record. Next witness?

22 MR. MARGOLIS: Your Honor, before the next witness
23 takes the stand, can I just ask for clarification about the
24 instruction you gave to Ms. Ciliberti as she left the stand
25 which was not to discuss her testimony until so advised by

1 Counsel.

2 JUDGE ROSAS: Right.

3 MR. MARGOLIS: Now, you're --

4 JUDGE ROSAS: In accordance with your obligations
5 under the sequestration order.

6 MR. MARGOLIS: Understood.

7 JUDGE ROSAS: So she's your designee I take it?

8 MR. MARGOLIS: She's not, Your Honor.

9 JUDGE ROSAS: Okay.

10 MR. MARGOLIS: However, for example, I don't think
11 it's any surprise that we intend to call her on our case. My
12 assumption is that we certainly can speak to her to prepare her
13 testimony. She's finished her 611(c) examination.

14 JUDGE ROSAS: Of course.

15 MR. MARGOLIS: So we have a clean slate. Thank you.

16 JUDGE ROSAS: Okay. Off the record.

17 (Whereupon, a brief recess was taken)

18 MR. ROSE: Gregg Cory, please.

19 Whereupon,

20 GREGG CORY

21 Having been duly sworn, was called as a witness herein, and was
22 examined and testified as follows:

23 JUDGE ROSAS: Please have a seat. State and spell
24 your name, provide us with an address, please.

25 THE WITNESS: My name is Gregg Cory. G-R-E-G-G C-O-

1 R-Y. I'm the vice president for Southern Manhattan and my
2 address is 59 Paidge Avenue, Brooklyn, New York, 11222.

3 DIRECT EXAMINATION

4 BY MR. ROSE:

5 Q Good afternoon, Mr. Cory.

6 A Hello, sir.

7 Q Mr. Cory, please state again your job title.

8 A Vice President of Operations for Southern Manhattan.

9 Q Is that for Time Warner Cable?

10 A Yes.

11 Q How long have you had that position?

12 A Four and a half years.

13 Q And where is your office located?

14 A 59 Paidge Avenue in Brooklyn.

15 Q How long have you worked there at that location?

16 A Four and a half years.

17 MR. ROSE: Your Honor, I asked permission to examine
18 the witness pursuant to Rule 611(c).

19 JUDGE ROSAS: Granted.

20 Q Mr. Cory, could you please look at General Counsel's
21 Exhibit 18(a) and (b). Do you recognize what 18(a) is

22 A Yes.

23 Q What is that, please?

24 A It's an aerial shot of the facility.

25 Q And if you look at 18(b), first of all is that correct

1 identification of Paidge Avenue and Provost Street?

2 A Yes.

3 Q Okay. And would you agree that the numbers that appear
4 there, numbers 1 through 8 appear above points of ingress and
5 egress of Paidge Avenue?

6 A Yes.

7 Q Okay. Can I ask you to identify the purpose or use of the
8 ingress or egress under number one?

9 A Number one is an exit only to the indoor garage.

10 Q Indoor garage?

11 A Yes.

12 Q Okay. What kind of vehicles exit?

13 A Truck. Service trucks.

14 Q And number two, underneath number two, can you identify
15 that?

16 A Number two is a firehouse. It's not our facility.

17 Q If you know, is that firehouse or just a warehouse?

18 A It's an annex.

19 Q It's an annex?

20 A An annex.

21 Q An annex to a firehouse?

22 A Yes, it's an NYFD annex.

23 Q Okay. And what's under number three, please?

24 A That's another exit to the indoor garage.

25 Q Under number four, please.

- 1 A That is the bay for the mechanics where they have the
2 aerial lifts to do mechanical work, or could say mechanical
3 garage.
- 4 Q Under number five, please?
- 5 A Same. Second bay.
- 6 Q Under number six, please?
- 7 A Deliveries of warehouse materials and office materials.
- 8 Q Under number seven, please?
- 9 A The same, warehouse. Two bays for that as well.
- 10 Q Under number eight please.
- 11 A Eight is the entrance to the indoor garage.
- 12 Q I'm sorry, did I skip seven, sir?
- 13 A No, I said seven was the same as six which is the
14 warehouse.
- 15 Q Are you familiar -- is it correct to say you had
16 involvement in the decision making process in the investigation
17 with regard to suspensions that are an issue here?
- 18 A Yes.
- 19 Q And are you familiar with the security video tape?
- 20 A Yes.
- 21 Q If you could please look at General Counsel's Exhibit
22 19(b).
- 23 A 19(b)?
- 24 Q 19(a). Thank you. Is that the as still from the security
25 video?

1 A Yes.

2 Q And would it be possible, if it isn't, let me know. Would
3 it be possible to identify -- do you see in the foreground
4 there's an American flag hanging on it?

5 A Yes.

6 Q Only if possible, would you be able to describe where on
7 GC-18(b) is that flag located?

8 A Say that again, I'm sorry.

9 Q If you look at 18(b), would you be able to identify where
10 that flag is located?

11 A It's in between what you don't have marked here. The main
12 entrance, the personal entrance, not a vehicle entrance, which
13 is not marked, in between the first indoor garage eight.

14 Q Okay. So would you say it was looking at this photograph
15 here, a little bit to the right of eight?

16 A Yeah. It's to that lighter section to the right of eight.

17 Q I see, that lighter vertical section --

18 A Yes.

19 Q -- coming up, thank you. And do you know where the
20 security camera in this photograph was located?

21 A That's right above that.

22 Q Okay. Now, if you could look at 19(b). Based on the
23 company investigation, and only if you can, I want to ask you,
24 if you could make reference to 18(b).

25 A 18(b)?

1 Q 18(b) and looking at 19(b) and 18(b) together.

2 A Okay.

3 Q Can you identify if at all, and again, if you can't let me
4 know, based on the company's investigation what was blocked,
5 what ingress or egress was blocked at this point in time in the
6 photograph?

7 A The main outdoor parking lot was blocked.

8 Q And where is that?

9 A That is, you want me to go back to, it's not marked on
10 your paper.

11 Q It's not marked. If you could describe it in words.

12 A So there's a large, one of the largest outdoor lots. This
13 is a dead-end that goes into the parking lot. So this is the
14 outdoor lot here.

15 JUDGE ROSAS: Referring to the lower right?

16 THE WITNESS: Yeah. This is the outdoor lot in the
17 largest parking lots.

18 Q Now, thank you. If you could please hold onto 18(b).

19 A 18(b)?

20 Q Yeah. And if you could please look at 20(b).

21 A 20(b). Yeah.

22 Q Based on the company's investigation, can you identify at
23 this point in time what is, if anything, is being blocked?

24 MR. MARGOLIS: Your Honor, I'm going to object.

25 JUDGE ROSAS: Okay.

1 MR. MARGOLIS: We have in evidence a video that
2 depicts the entire event.

3 And it was obviously an involving series of events
4 that made up this job action.

5 And to pick out a particular frame is like saying you
6 didn't see someone rob the bank.

7 In other words, the job action that's alleged in the
8 complaint, took place between approximately 6:20 a.m. and
9 approximately 8:00 a.m.

10 It was an evolving series of events. So it's a
11 misleading and inappropriate question to say in a particular
12 frame what is blocked.

13 The allegation of the complaint is not about 6:26:17.
14 The allegation of the complaint is about the entire "job
15 action."

16 MR. ROSE: Your Honor, these are demonstrative
17 exhibits.

18 And I think they're helpful for the reader of the
19 record, because if you look at the, based on the angle of the
20 security video in 20(b) for example, you don't see the points
21 of ingress and egress.

22 And I simply want to establish at various points in
23 time what is being blocked. If the company's position was
24 ingress and egress was blocked, I'd like to establish what was
25 blocking it and when it was blocked.

1 JUDGE ROSAS: If I recall from previous witnesses
2 testimony, this gentleman was part of the deliberative process
3 regarding the disciplines?

4 MR. ROSE: Yes.

5 JUDGE ROSAS: Is that right?

6 MR. ROSE: Yes.

7 JUDGE ROSAS: Can I ask you to step outside.

8 THE WITNESS: Sure.

9 JUDGE ROSAS: So it's part of the determination that
10 I'm going to have to make is what the physical conditions were
11 at given times, correct? Do you agree?

12 MR. MARGOLIS: Between 6:20 and 8:00 a.m.

13 JUDGE ROSAS: Okay. Now, this is 6:26.

14 MR. MARGOLIS: Correct.

15 JUDGE ROSAS: All right. So this falls within that
16 timeframe.

17 The question that you're asking seeks to elicit from
18 this witness what, if anything, was being blocked as far as
19 ingress and egress in his view.

20 Now, seems to me at this early point that that bone
21 of contention as to whether anybody is being blocked and if so,
22 when, is an important part of a fact finding. Is that right?

23 MR. ROSE: Yes, Your Honor.

24 JUDGE ROSAS: Do you agree with that?

25 MR. MARGOLIS: Well, you want me to answer your

1 question.

2 JUDGE ROSAS: I'm going to have to make that
3 determination.

4 MR. MARGOLIS: Yes, Your Honor. However, the stated
5 reason for the question, when you ask Mr. Rose, he pointed out
6 that the photo, GC-20(b), you can't see the points of egress
7 and ingress because of the camera angle.

8 So I think that question is properly answered by
9 having the witness explain well, where is car number one with
10 respect to a particular egress or ingress.

11 It's not answered by saying what was blocked. What
12 was blocked, Your Honor, is the entire access to the facility
13 between 6:20 and 8:10. That's what was blocked.

14 JUDGE ROSAS: Okay.

15 MR. ROSE: Your Honor.

16 JUDGE ROSAS: I have enough at this point. The term
17 blocked is a contentious one.

18 It's one that I have to make a determination as to
19 whether something was blocked or was not blocked at a given
20 time and a given location.

21 All right. And that's part of the deliberative
22 process on their part in arriving at disciplinary decisions.

23 What I'm going to ask you, General Counsel, to
24 refrain from is the term blocked. I'm going to sustain the
25 objection.

1 And what I'm going to do at this point is because
2 what you've done in 19(b) for purposes of 19(b), 18(b), I think
3 I'm referring to 18(b), the one with all the marking.

4 MR. ROSE: Okay.

5 JUDGE ROSAS: You need to make your case out as far
6 as what you believe they decided or what they based their
7 decision on.

8 You've established that there are points of ingress
9 and egress, okay? And now you're asking about a photograph
10 20(a). Right?

11 MR. ROSE: Yes.

12 JUDGE ROSAS: Okay. I understand where you're going
13 with this, but you're going to have to leave out the
14 contentious term blocked.

15 What you are going to have to establish or you can
16 elicit from him is if he knows and I'll overrule the objection
17 to that extent where these points are, along in 20(a), if he
18 can tell.

19 I understand you're referring to this particular
20 point in time as reflecting a certain condition, correct?

21 MR. ROSE: Yes, Your Honor.

22 JUDGE ROSAS: And you're entitled to establish in
23 this photograph if he can tell, okay, this witness knows form
24 this photograph at what point he maybe needs to mark this
25 photograph up.

1 Where the points of ingress and egress are.

2 MR. ROSE: Well, Your Honor, if I may be heard, the
3 term blocking is the company's term.

4 They determined there was blocking of ingress and
5 egress. They say it over and over again.

6 I'd like to know what was blocked. That's all.

7 JUDGE ROSAS: You're going to have to establish some
8 foundation --

9 MR. ROSE: Based on the --

10 JUDGE ROSAS: -- well, we've got, I don't know what
11 is it an approximate two hour period for the video?

12 MR. MARGOLIS: A little less.

13 JUDGE ROSAS: Okay. If it's based on a blocking at a
14 particular point in time, at various point in time, that's not
15 established at this point as far as what the company decided.

16 You have some general testimony from the previous
17 witness as to what went into the basis of their discipline,
18 correct?

19 MR. ROSE: Mm mmm.

20 JUDGE ROSAS: All right. So when you use the term
21 where is there blocking here in this photograph 20, that's
22 assuming certain facts that have not been established yet.

23 That assumes that the company had made a
24 determination that there was blocking already at this point.

25 MR. ROSE: I could ask the question was there

1 blocking.

2 JUDGE ROSAS: You need to establish some foundation.

3 MR. ROSE: Okay. All right. Very well.

4 JUDGE ROSAS: Because just to --

5 MR. ROSE: Very well.

6 JUDGE ROSAS: -- I'm trying to read into some of
7 these questions and it maybe something --

8 MR. ROSE: Very well.

9 JUDGE ROSAS: -- that you haven't even considered.
10 But from my standpoint, it appears to me to be an area where
11 the witness not need not lead to if the witness is going to
12 start to get into the whole point of speculating or making
13 statements that may or may not have been of the Respondent's
14 deliberative process.

15 I don't know. I understand there's a two-hour period
16 and at some point during the two-hour period it is the claim of
17 the Respondent that employees were blocking.

18 MR. ROSE: Okay.

19 JUDGE ROSAS: Okay. But, you see what I'm saying.

20 MR. ROSE: I understand.

21 JUDGE ROSAS: Blocking is a loaded term. So we have
22 to tread very carefully on its use at different points in time
23 here, by no means limits you as far as I'm concerned in
24 establishing what photographs show if we're comparing, for
25 example, 20(a) to those points on 18.

1 Okay. General Counsel's 18. So hopefully with that
2 rendition, I need some clarification.

3 MR. ROSE: Your Honor, I will lay a foundation with
4 the question has the company determine at this point in time
5 there was blocking and, if so, what is being blocked. I
6 believe that's your clarification?

7 JUDGE ROSAS: Well, let's take the question one at a
8 time.

9 MR. ROSE: Right.

10 JUDGE ROSAS: And again, there's got to be foundation
11 for this witnesses testimony based on the question that you're
12 asking. Okay?

13 MR. ROSE: Okay. All right.

14 JUDGE ROSAS: Let's see where it goes. We can bring
15 him in.

16 MR. MARGOLIS: Your Honor, I would submit that the
17 question whether there's blocking at this moment is not a
18 relevant inquiry.

19 That's what the complaint alleges participation in
20 the job action. So it's not informative whether there was
21 blockage at 6:28:17.

22 Relevant inquiry is whether there was blockage
23 between 6:20 and 8:00 a.m.

24 JUDGE ROSAS: That may very well be, Counsel. I'm
25 not going to be that strict at this point. I'm not going t

1 make that determination.

2 MR. MARGOLIS: Okay.

3 JUDGE ROSAS: 'Cause again, General Counsel's got a
4 theory of their case that it's the conduct of the employees
5 over a two-hour period that provide the backdrop of this action
6 on the part of the employer.

7 MR. ROSE: Well, not all of the employees were there.
8 Employees were there at different periods of time for different
9 lengths of time.

10 JUDGE ROSAS: Okay. All right. Overrule. I'm
11 essentially overruling and sustaining in part, I guess. You're
12 going to have to rephrase and see where we go, okay?

13 MR. ROSE: Okay.

14 MR. MARGOLIS: Shall I call the witness?

15 JUDGE ROSAS: Please.

16 DIRECT EXAMINATION (cont)

17 BY MR. ROSE:

18 Q Mr. Cory, what was your role, if you could please describe
19 it, with respect to the suspensions of the employees in
20 question?

21 A So I was privy to the investigations, reviewed the
22 scenarios case by case with each individual, along with my
23 leader in HR.

24 And we all weighed in on what the outcome of those
25 disciplines should be.

1 Q And did the investigation determine that there was
2 blocking on the street at any point in time that morning?

3 A Yes.

4 Q Did the investigation determine that there was blocking of
5 ingress and egress?

6 A Yes.

7 Q So if you could please look at General Counsel's exhibit.
8 If you could go back to 19(b) and 18(b) and put those two
9 together in front of you.

10 A Mm mmm.

11 Q Okay. If you could look at 19(b). Based on the company's
12 investigation --

13 A Yes.

14 Q Is there any blocking going on at this time?

15 A Yes.

16 Q Okay. What is causing the blocking based on the company's
17 investigation?

18 A A vehicle across the road.

19 Q Is that vehicle labeled number one?

20 A Yes.

21 Q Now, if you can, can you identify on 18(b) based on the
22 company's investigation what ingress or egress is being
23 blocked?

24 A The main parking lot which is not numbered.

25 Q Okay. That's the area on the far right bottom right-hand

1 corner of the photograph in 18(b)?

2 A Correct.

3 Q Now, if you could please look at 20(b) and 18(b), I hope
4 is still in front of you.

5 A Yeah.

6 Q Okay. Did the company's investigation determine that
7 there was blocking at this point in time at 6:26 a.m. and 17
8 seconds?

9 A Yes.

10 MR. MARGOLIS: Your Honor, I think we're back to the
11 same question that we were asking before we excused the
12 witness.

13 MR. ROSE: Your Honor, I need to establish -- there
14 is a theory about when blocking occurred.

15 JUDGE ROSAS: Repeat the question.

16 Q If you look at 20(b), okay, did the company and 20(b)
17 comes from a time stamped security video.

18 Would you not agree? That's 6:26 a.m. and 17 seconds.
19 Okay?

20 Did the company determine at this point in time was there
21 any blocking of ingress and egress based on the investigation?

22 A May I answer this question?

23 JUDGE ROSAS: Do you have an objection?

24 MR. MARGOLIS: Well, the objection was to choose a
25 particular moment of time in asking about blocking, which we

1 addressed while the witness went out of the room.

2 And now I think we're back to the same question.

3 JUDGE ROSAS: The question is prefaced with the
4 remark did the company make a determination, if you know.

5 THE WITNESS: I'm sorry, ask the question again.

6 JUDGE ROSAS: Repeat the question.

7 BY MR. ROSE:

8 Q Did the company make a determination that at this point in
9 time what this photo depicts 6:26 a.m. and 17 seconds, did the
10 company make a determination that there was any blocking of
11 ingress and egress?

12 A Yes.

13 Q Okay. What ingress or egress is being blocked?

14 A Okay. So at 6:26 on this page, the main gate is being
15 blocked. There are people on the road causing blockage.

16 Q Well, if you could answer the question and if you could
17 refer to per 18(b) and identify what ingress and egress is
18 being blocked. If you could refer to the numbers.

19 A So at this point in time at 6:26 to me it looks like,
20 again, the main lot which is not numbered, the main door which
21 is not numbered, eight which is eight or eight all the way to
22 three is blocked.

23 Which are all the entrances. So every entrance is
24 blocked.

25 Q Okay. Now, keeping GC-18(b) in front of you, if you could

1 look at GC-21(b) .
2 A Mm mmm.
3 Q Now, 21(b) is a screenshot from the video at 6:31 a.m. and
4 12 seconds.
5 A Okay. So we're going backwards in time?
6 Q Are we?
7 A Yeah. 6:33, right?
8 Q Oh, I'm sorry, 21(b). Are you looking at 21(b).
9 A 21(b) 6:31.
10 Q Right.
11 A Okay. So which one did you ask before?
12 Q Maybe I misspoke. I'm looking at 21(b) with a timestamp
13 6:31 and 12 seconds.
14 A Okay.
15 Q Did the company make a determination in its investigation
16 at that point in time that there was blocking of ingress and
17 egress?
18 A Yes.
19 Q Okay. And if you could look at 18(b), could you, if you
20 can, describe what ingress and egress is being blocked?
21 A Again, it looks to me as of the main parking lot and
22 everything up to all the entrances.
23 Q So from 3, 4, 5, 6, 7, 8 and the end and beyond.
24 A 3 to 8 and the main entrance.
25 Q Okay. The main entrance being right next to the right of

1 8?

2 A Yes.

3 Q Okay. And if you can look at 22(b) with the timestamp
4 6:00 a.m. 33 minutes.

5 A Okay.

6 Q I'd like to ask you the same question. Did the company
7 determine whether there was any blocking of ingress and egress
8 at this point in time?

9 A Yes.

10 Q Okay. And if you could look at GC-18(b), can you identify
11 what ingress and egress is blocked?

12 A Again, same as before, 3, 2, 8, plus the main entrance.

13 Q Okay. If you could please look at GC-23(a). Okay. Same
14 question. Time stamped 6:33 a.m. and 49 seconds. Based on the
15 company's investigation did the company determine whether there
16 was blocking at this point in time with ingress and egress?

17 A Yes. All the entrances are blocked.

18 Q Okay. So the exact same answer as the answer previously?

19 A Yes.

20 Q Okay. And if you could look at GC-24, there's a timestamp
21 7:00 a.m. and 33 minutes and 25 seconds.

22 A Mm mmm.

23 Q Okay. Did the company determine in its investigation that
24 there was blocking at this point in time?

25 A Yes.

1 Q Okay. Can you please state based on looking at 18(b) what
2 ingress and egress is blocked?

3 A So I've seen the larger version of this picture.

4 So again, every entrance was blocked and there was
5 people all over the street blocking the street everywhere.

6 Q Okay. So your answer's 3, 4, 5, 6, 7, 8 and the main
7 entrance and the parking lot. Is that your testimony?

8 A I'm saying that, yes, 3, 4, 5, 6, 7, 8 and the main
9 entrance are all blocked. All entrances are blocked.

10 Q The same answer as in the previous photo. Is that
11 correct?

12 A Correct.

13 Q Okay.

14 MR. ROSE: I have no further questions, Your Honor.

15 JUDGE ROSAS: Charging Party, anything?

16 MR. MCGOVERN: No, Your Honor.

17 JUDGE ROSAS: Any cross?

18 MR. MARGOLIS: No, Your Honor.

19 JUDGE ROSAS: All right. Let's take a break for
20 lunch, say 2:15?

21 MR. ROSE: Okay.

22 JUDGE ROSAS: Okay. Sir, do not discuss your
23 testimony with anyone until advised otherwise by Counsel. All
24 right, thank you.

25 (Whereupon, at 1:08 p.m. a luncheon recess was taken)

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1 A F T E R N O O N S E S S I O N

2 (TIME NOTED: 2:15 p.m.)

3 JUDGE ROSAS: Next witness?

4 MR. ROSE: Ralf Andersen.

5 Whereupon,

6 RALF ANDERSEN

7 Having been duly sworn, was called as a witness herein, and was
8 examined and testified as follows:

9 JUDGE ROSAS: Please have a seat. State and spell
10 your name and provide us with an address.

11 THE WITNESS: Ralf Andersen. R-A-L-F A-N-D-E-R-S-E-
12 N, , Selden, New York.

13 DIRECT EXAMINATION

14 BY MR. ROSE:

15 Q Good afternoon, Mr. Andersen.

16 A Good afternoon.

17 Q Mr. Andersen, what do you do?

18 A I'm a foreman for Time Warner Cable.

19 Q How long have you worked for Time Warner.

20 A In August it'll be 37 years.

21 Q How long have you been a foreman?

22 A A little over two years.

23 Q Are you a member of the union?

24 A Yes, I am.

25 Q What union is that?

1 A IBEW Local 3.

2 Q How long have you been a member?

3 A As long as I've been with Time Warner Cable. Thirty seven
4 years.

5 MR. ROSE: Forgive me, Your Honor, I just have one
6 document for this witness.

7 Q Mr. Andersen, can you look at the document marked as
8 General Counsel Exhibit 31, please? Can you identify the
9 document?

10 A Yes, this is the document I received when I was suspended
11 for two days for not taking my tools.

12 (General Counsel's Exhibit GC-31 identified)

13 MR. MCGOVERN: Your Honor, I offer this into evidence
14 as General Counsel's Exhibit 31.

15 MR. MCGOVERN: No objection.

16 MR. MARGOLIS: Objection, Your Honor. Relevance. No
17 apparent connection whatsoever to the allegations in this case.

18 JUDGE ROSAS: Overruled. General Counsel's 31 is
19 received.

20 (General Counsel's Exhibit GC-31 received)

21 BY MR. ROSE:

22 Q When did you first see this document, Mr. Andersen?

23 A This was on April 1st, when they handed it to me.

24 Q Who handed it to you?

25 A I believe it was Ari Norman of HR.

1 Q And where was this?

2 A I think it was in my foreman office where my cubicle is.

3 Q Oh, by the way, what location do you work at?

4 A I work at 59 Paidge Avenue in Brooklyn, New York.

5 Q How long have you worked there?

6 A We were there probably around 10 years right now.

7 Q What happened just before you received that document in
8 your cubicle?

9 A It was in the afternoon of this day. I was called up to
10 Frank Turco, my manager's office.

11 He said he wanted to meet with me. And I went into his
12 office and Ari Norman was sitting there.

13 And I said, "What is this, is this a disciplinary action?"
14 And they said, "Yes, it is."

15 I said, "Well, I want my shop steward present." And they
16 said, "There's no shop steward available."

17 And I said, "Well, then I'm not going to be here." As I
18 started to walk out, Ari Norman followed me and he said,
19 "You're getting a two-day suspension, no matter what."

20 He followed me to my office. And he said, I'm going to
21 make you a copy of the document.

22 He handed me the document and asked for my keys to the
23 vehicle. The company vehicle.

24 Q And what happened next.

25 A I said, "Well, then how am I going to get home?" And he

1 said, "We'll get a car service for you. Wait out front of the
2 building."

3 Q What did you do next?

4 A I proceeded to get my personal belongings and I went
5 downstairs in front of the building.

6 Q Were you alone?

7 A In front of the building, no.

8 Q And who were you with?

9 A I was with two other foreman that were suspended also and
10 a group of techs and other foreman.

11 Q Did you have any conversations?

12 A Yes.

13 Q Just briefly what were the subjects of the conversation?

14 A They wanted to know what we were doing standing out in
15 front of the building and we told them.

16 Q Between the end of that meeting that you were describing
17 on April 1st and when you went to bed that night, did you speak
18 to anyone from your union?

19 A Yes.

20 Q Whose that?

21 A Derek Jordan, my business rep.

22 Q Was this in person, on the phone?

23 A On the phone.

24 Q About when was this?

25 A I believe it was in the vehicle, in the service car that

1 Brook was bringing me home.

2 Q And how long was this conversation?

3 A Five minutes.

4 Q Did you call him or he call you?

5 A I called him.

6 Q Okay. What did you say, what did he say in this
7 conversation?

8 MR. MARGOLIS: I'm going to object, Your Honor.

9 MR. ROSE: Nothing being offered for the truth, Your
10 Honor.

11 JUDGE ROSAS: I understand that. Mr. Jordan's going
12 to testify I assume.

13 MR. ROSE: We're not going to call him, Your Honor.

14 JUDGE ROSAS: You're not, okay. Can you step out for
15 a minute? Don't go too far.

16 We didn't have a little discussion about my general
17 approach to hearsay? We didn't have that in the conference
18 call?

19 MR. ROSE: I don't believe so.

20 JUDGE ROSAS: Essentially water cooler variety
21 hearsay doesn't come in. Reliable hearsay comes in.

22 Obviously we try to apply the Federal Rules of
23 Evidence when practicable. It's all broader in our
24 proceedings, however, you don't detract from the notion that
25 hearsay must be reliable.

1 So while there isn't an absolutely defined range of
2 examples of how I would determine admissible hearsay, what I
3 can tell you is if it's reliable I'll receive it.

4 Reliability might include, but not be limited to the
5 out of court declarant also be called to testify being subject
6 to cross examination by the other side regarding that.

7 Now, in this instance, you're saying that it's not
8 offered for the ultimate question. Well, what's it being
9 offered for then?

10 MR. ROSE: Background, Your Honor. Now, you saw from
11 the documents that were --

12 JUDGE ROSAS: Corroboration, it could also be
13 corroboration with documentation. Go ahead.

14 MR. ROSE: This is predicate to why the employees
15 were there. Now, it's not just background.

16 JUDGE ROSAS: You're talking about relevance now.

17 MR. ROSE: I'm talking about relevance.

18 JUDGE ROSAS: I'm talking about reliability is what I
19 need you to explain to me.

20 MR. ROSE: Well --

21 JUDGE ROSAS: Of the hearsay. If you're not
22 subjecting that out of court declarant this cross examination.

23 MR. ROSE: Because I'm not offering -- I'm just
24 offering for the fact that the conversation occurred and a
25 topic was discussed.

1 Not offering for the ultimate truth. And the reason
2 I'm offering it, Your Honor, is that, you know, you saw from
3 Mr. Andersen's document, for example, that he was alleged to
4 have instigated and not only participated in this event.

5 AS well, you saw from the questions that were asked
6 of the interviewees, there were all sorts of questions about
7 who did you talk to, did you talk to anybody from the union,
8 you know, all those sorts of questions.

9 We want to put in evidence on that.

10 JUDGE ROSAS: Okay. We're not talking about
11 relevance, we're talking about reliability.

12 Where is there some kind of corroboration or what
13 does maybe that in and of itself corroborates what you believe
14 did or did not happen.

15 You can certainly elicit from this witness what, in
16 response to something that Mr. Jordan who is on the other end
17 of the line, without eliciting what Mr. Jordan said, 'cause he
18 can't cross examine that, what he said.

19 MR. ROSE: Okay.

20 JUDGE ROSAS: What he told Mr. Jordan during the
21 conversation. That's subject to cross examination. But what
22 Mr. Jordan told him, that's a complete, you know, loose cannon.

23 MR. ROSE: Okay.

24 JUDGE ROSAS: I'm not going to permit that and I
25 don't know where that's going. And again, you know, I'm always

1 open to any indicia of trustworthiness or, you know,
2 corroboration if you will.

3 But you're not providing me with any, so what you can
4 elicit is what, if anything, he told Mr. Andersen, okay?

5 MR. ROSE: Very well, Your Honor.

6 JUDGE ROSAS: All right.

7 MR. MARGOLIS: Your Honor, there is a broader issue.

8 JUDGE ROSAS: Of course.

9 MR. MARGOLIS: Which Mr. Rose has alluded to. And
10 that is he made reference to the fact that that's why the
11 employees were there.

12 Something like that. It doesn't matter why the
13 employees were there. The issue in the case turns on what
14 happened on April 2nd.

15 In other words, let's say on April 1st the company
16 called in 25 people and said, you're being fired because of
17 your union activity.

18 And then the next day there was a blockade at the
19 premises. The blockade is unprotected and/or the General
20 Counsel can argue that it is protected or whatever arguments
21 they want to make.

22 But the reason that the employees were there that is
23 based on conversations between an employee and a union
24 representative the day before, it doesn't bear any weight on
25 the issue.

1 MR. ROSE: Your Honor, Respondent's own investigation
2 raised this as relevant. We want to put that evidence in. We
3 saw from the documents.

4 We saw from the questions that were asked. It was
5 relevant to their investigation. And it's relevant here, not
6 just for background.

7 JUDGE ROSAS: Well, the objection is sustained in
8 part and it's overruled in part. You understand what the
9 appropriate context of your next question can be.

10 MR. ROSE: Okay.

11 JUDGE ROSAS: Okay.

12 DIRECT EXAMINATION (Cont)

13 BY MR. ROSE:

14 Q Mr. Anderson, this conversation with Mr. Jordan, just
15 explain, what did you tell him, not what he told you. Just
16 what did you say to him?

17 A I just told him I just got suspended and that I wanted to
18 grieve it. I didn't have a shop steward present.

19 Q All right. The following morning, did you leave home?

20 A Yes, I did.

21 Q Where did you go?

22 A I went to 59 Paidge Avenue.

23 Q Why did you go there?

24 A To file a grievance with my shop steward.

25 Q And about what time did you leave your house?

- 1 A About 4:45 in the morning.
- 2 Q Usually at that timeframe in 2014, what time did you leave
- 3 your house in the morning?
- 4 A 4:30.
- 5 Q Any particular reason why you would leave at that time?
- 6 A Just to beat traffic.
- 7 Q Okay. And when did your shifts start in 2014?
- 8 A I believe it was 7:00 a.m.
- 9 Q And what time did you arrive at Paidge Avenue?
- 10 A As I recall it was like 10 to 6:00.
- 11 Q And how did you get there?
- 12 A My personal vehicle.
- 13 Q What kind of car was that?
- 14 A An Acura TL.
- 15 Q And when you arrived at Paidge Avenue, what did you do?
- 16 A I parked my vehicle.
- 17 Q Was it front end or back end?
- 18 A I backed in.
- 19 Q Where did you park?
- 20 A It was the far end near Provost and Paidge Avenue where
- 21 they meet.
- 22 Q Now, if you're on Provost Street and you're looking at
- 23 Paidge Avenue, did you park your car to the right or to the
- 24 left?
- 25 A To the right.

1 Q Okay. And about how many parking spaces were between
2 where you parked and the corner of Provost and Paidge?

3 A I think it was about three or four parking spots from the
4 corner.

5 Q Okay. By the way, you're familiar with Provost and Paidge
6 Avenue?

7 A Yes.

8 Q Okay. And after you parked, what did you do?

9 A I believe I turned on the radio, closed my eyes and I
10 dozed off.

11 Q Okay. How long were you dozed off?

12 A I believe it was like 20 minutes to a half hour.

13 Q Okay. And when you woke up, what did you see before you?

14 A There were many cars stopped in front of me.

15 Q What did you do then?

16 A I got out of my vehicle.

17 Q And what did you do?

18 A I started to walk down Paidge Avenue.

19 Q And what did you do then?

20 A I looked to see the blockage, why the cars couldn't move.

21 Q Okay. And what did you see?

22 A I saw other vehicles parked in the middle of the road.

23 Q And what did you do after you saw those vehicles?

24 A I saw a group of people. They were mixed. And I went
25 over and said, "What's going on?" And they told me it was a

1 safety meeting.

2 Q Okay. And what did you do next?

3 A I saw the shop steward.

4 Q Who is that?

5 A Phil Papale.

6 Q And did you speak to him?

7 A Yes, I did.

8 Q And in this conversation, can you please just relate what
9 you told Mr. Papale, not what he told you.

10 A I told Phil Papale that I was just suspended yesterday and
11 I wanted to file a grievance with him, 'cause I was told I had
12 to do it with a shop steward.

13 Q And what did you do next?

14 A He handed me a piece of paper and he said, "Later." And I
15 took the paper and I walked to the side.

16 MR. ROSE: Okay. If the court reporter please can
17 show the witness General Counsel's Exhibit 34.

18 JUDGE ROSAS: Have you offered 34?

19 MR. ROSE: Not yet.

20 JUDGE ROSAS: Okay.

21 Q Do you recognize that?

22 A Yes, I do.

23 Q What is that?

24 A That is what Phil Papale handed me.

25 (General Counsel's Exhibit GC-34 identified)

1 MR. ROSE: Your Honor, I offer this into evidence as
2 General Counsel's 34.

3 MR. MCGOVERN: No objection.

4 JUDGE ROSAS: Any objection?

5 MR. MARGOLIS: No objection.

6 JUDGE ROSAS: Okay. General Counsel's 34 is
7 received.

8 (General Counsel's Exhibit GC-34 received)

9 BY MR. ROSE:

10 Q Okay. After he handed this to you, what did you do next?

11 A I walked over between two parked cars.

12 Q And what did you do there?

13 A I saw somebody I knew and I started talking to them.

14 Q Who's that person?

15 A Steve Ramnarace.

16 Q Who is that?

17 A He is the construction manager.

18 JUDGE ROSAS: Can you spell the last name?

19 THE WITNESS: That's a good one. R-A-M-N-A-R-A-C-E.

20 Q Did you two converse?

21 A Yes.

22 Q What was the subject of your conversation?

23 A He just said, "What's going on?" I said, "It's a safety
24 meeting." He said, "Oh." And then we just started talking
25 personal stuff.

1 About softball, 'cause I know him, you know, we always
2 talk softball and family, how they doing, 'cause he lives out
3 by me.

4 Q And how long was this chat?

5 A It had to be at least probably 15, 20 minutes.

6 Q And what happened then?

7 A Somebody was trying to get everybody's attention. There
8 was a group behind me.

9 I turned around and I saw they were trying to get
10 everybody's attention at the meeting.

11 Q Who's they?

12 A The shop stewards and Derek Jordan.

13 Q And what did you do?

14 A I took a couple steps. I was still between the parked
15 cars and I just listened.

16 Q Okay. What did you hear?

17 A They were pretty much just saying, you know, follow the
18 speed limits, don't anybody -- you got to follow the rules, you
19 know, traffic laws.

20 If you're on a roof, you know, make sure you're very safe.
21 It was just a strict safety meeting and just to go over safety.

22 If you feel like it's not a safe issue, get in touch with
23 the shop steward and your foreman.

24 Q And who was doing this talking?

25 A Derek Jordan.

1 Q Okay. And how long did this last?

2 A Roughly 15, 20 minutes.

3 Q And what happened after that?

4 A Then the gentleman next to Derek Jordan started talking.

5 Q Can you recall what he talked about?

6 A I really can't recall what it was about.

7 Q Okay. What happened next?

8 A Then everything started breaking up. And when traffic was
9 cleared, I walked to my car. I saw Phil in passing.

10 I told him forget about doing it today. When I get back
11 to work on Friday, I'll file my grievance. I walked to my car
12 and I left.

13 MR. ROSE: May I have a moment, Your Honor? No
14 further questions, Your Honor.

15 JUDGE ROSAS: Charging Party?

16 MR. MCGOVERN: No, Your Honor.

17 JUDGE ROSAS: Cross?

18 MR. ROSE: Could we have any copies of any statements
19 that the General Counsel's in possession of, please?

20 JUDGE ROSAS: Off the record. Oh, you want to say
21 something on the record about it?

22 MR. ROSE: Yes, Your Honor. There's no affidavit
23 regarding his testimony, however, there are two affidavits
24 regarding the supervisory status issue which was an affirmative
25 defense that was withdrawn.

1 So under the rules, I believe Your Honor looks at
2 those affidavits in camera. Would you like copies of them now,
3 Your Honor?

4 JUDGE ROSAS: Yes. Off the record.

5 (Whereupon, a brief recess was taken)

6 JUDGE ROSAS: After a review of the two Jenks
7 affidavits or Board affidavits generated by the General Counsel
8 based on the representation of that, there is nothing in those
9 affidavits for Counsel for Respondent to review in connection
10 with the allegations in this proceeding.

11 I did review those two affidavits and those two
12 affidavits do appear in their entirety to refer to different
13 aspects of this witness, as well as the previous statements by
14 this witness with respect to his responsibilities and as I
15 understand it, based on representations by Counsel for General
16 Counsel.

17 They were generated in connection with his
18 supervisory status or lack thereof and Respondent has further
19 explained to me off the record that their affirmative defense
20 was withdrawn.

21 It was not withdrawn on the basis of any
22 representation from the General Counsel that might otherwise be
23 confirmable by viewing those documents, so it makes no
24 difference in that regard.

25 So I'm precluding Respondent from looking at those

1 documents over objection. And they'll be marked ALJ 1 and 2.

2 (Administrative Law Judge's Exhibit ALJ-1 and Administrative

3 Law Judge's Exhibit ALJ-2 identified)

4 JUDGE ROSAS: And they'll be kept in a rejected

5 exhibit folder that'll be sealed. Next question?

6 MR. ROSE: I have no further questions.

7 JUDGE ROSAS: Okay.

8 MR. MARGOLIS: Your Honor, can we just have like 10

9 minutes?

10 JUDGE ROSAS: Sure. Okay. We'll take a break.

11 (Whereupon, a brief recess was taken)

12 JUDGE ROSAS: Respondent cross.

13 CROSS EXAMINATION

14 BY MR. MARGOLIS:

15 Q Mr. Andersen, you testified that you live in Selden, Long

16 Island, correct?

17 A Correct.

18 Q And that's where you lived in April of 2014, correct?

19 A Correct.

20 Q That's in Suffolk County, isn't it?

21 A Correct.

22 Q And it's East of Ronkonkoma, right?

23 A Correct.

24 Q East of Melville and Commack?

25 A Mm mmm.

- 1 Q It's near Port Jefferson, isn't it?
- 2 A Yeah. It's not as far north, but it's about the same
- 3 distance out.
- 4 Q So it's probably about 55 miles from there to the Paidge
- 5 Avenue facility, correct?
- 6 A Mm mmm.
- 7 Q Now, on April 1st, you received a suspension for refusing
- 8 to accept tools from your manager, correct?
- 9 A Correct.
- 10 Q And that suspension was for two days, wasn't it?
- 11 A Yes.
- 12 Q So the days of the suspension were April 2nd and 3rd, right?
- 13 A Yes.
- 14 Q So in the normal course, you came back to work on April
- 15 5th, right?
- 16 A Correct.
- 17 Q So because of that suspension you were not scheduled to
- 18 work on Wednesday, April 2nd, correct?
- 19 A Correct.
- 20 Q Mr. Andersen, have you ever been involved in any
- 21 grievances in the past?
- 22 A For myself?
- 23 Q Yes.
- 24 A Never.
- 25 Q And did you ever file grievances on behalf of anyone else?

1 A No.

2 Q Okay. Now, you told us that you spoke to Derek Jordan on
3 the phone on the day you were suspended, April 1st, right?

4 A Yes.

5 Q And you also told us that you were out in front of the
6 building waiting for the car service to pick you up.

7 A Yes.

8 Q And that you called Mr. Jordan from the car, right?

9 A I believe it was from the car, yes.

10 Q And who else was out in the front of the building with
11 you?

12 A Two other foreman.

13 Q And did either of those foreman tell you that Mr. Papale
14 had also been suspended that day?

15 A I knew about it, yes.

16 Q So before you went out in front of the building on April
17 1st, you knew that Mr. Papale had been suspended?

18 A Yes.

19 Q Did you know how long his suspension was for?

20 A No.

21 Q And even though you knew that Mr. Papale had been
22 suspended, you drove to Paidge Avenue the next day, April 2nd,
23 to file a grievance with him, is that correct?

24 A Well, with the shop steward.

25 Q With the shop steward.

1 A Right.

2 Q And Mr. Papale was a shop steward, right?

3 A And I believe also Jimmy Himko was also.

4 Q And you didn't see Jimmy Himko about your grievance, did
5 you?

6 A I didn't see him no.

7 Q Now, you testified that Mr. Papale gave you a piece of
8 paper.

9 A Yes.

10 Q Was that a piece of paper in connection with filing a
11 grievance?

12 A No.

13 Q Now, in any event, you decided that I'm not going to file
14 a grievance today, I'll wait 'til I come back to work on
15 Friday, correct?

16 A Correct.

17 Q Okay. So having driven 55 miles for the purpose of filing
18 a grievance, you then decided I'll go home and I'll file the
19 grievance when I come back to work, correct?

20 A Correct.

21 Q And that was the only reason you drove to Paidge Avenue
22 that morning.

23 A Correct.

24 Q And didn't occur to you to call the shop steward on the
25 phone to file a grievance?

1 A I didn't have his personal phone number.

2 Q Now, would you agree that in the series of events that you
3 testified to on April 2nd, that you were standing in the street
4 by around 6:35 a.m.?

5 A Yes, I believe so, yes.

6 Q And you remained there until the meeting broke off at
7 around 8:00 or so, correct?

8 A I don't recall the time it broke up, but, yeah, as soon as
9 it broke up and the cars went back up the street where I knew I
10 could pull my car out, I left.

11 Q Okay. And you said that you took a brief nap after you
12 parked your car?

13 A Yes.

14 Q And when you woke up from your nap, you would not have
15 been able to drive your car out, would you?

16 A Correct, correct.

17 Q And that is because the street was blocked.

18 A Yes.

19 Q You testified that you didn't have the personal phone
20 number for the shop steward.

21 And when you told Derek Jordan that you wanted to file a
22 grievance about your suspension, he told you that you had to
23 file with the steward, right?

24 A Correct.

25 Q And did you ask Mr. Jordan for the phone number for the

1 steward so you could file that grievance?

2 A No, I did not.

3 Q And it would have been a lot easier to do that than to
4 drive 55 miles to Paidge Avenue, wouldn't it?

5 A Sure.

6 Q You testified that after the meeting, the meeting broke
7 up, you walked back to your car, correct?

8 A Mm mmm.

9 Q And you waited until you were able to get your car out and
10 then you drove off, correct?

11 A Correct.

12 Q And how long do you think it was that you had to wait for
13 the road to clear off before you were able to drive off?

14 A That's a good question. About a half hour, I guess.

15 MR. MARGOLIS: Nothing further, Your Honor.

16 JUDGE ROSAS: Any redirect?

17 MR. ROSE: Two minutes.

18 JUDGE ROSAS: Off the record.

19 (Whereupon, a brief recess was taken)

20 MR. ROSE: No redirect questions, Your Honor.

21 JUDGE ROSAS: Alright, thank you. Please do not
22 discuss your testimony with anyone unless advised by Counsel.

23 THE WITNESS: Okay. Thank you.

24 JUDGE ROSAS: Next witness? Did, while you all are
25 here, General Counsel's 27, was that received?

1 MR. MCGOVERN: One second, Your Honor. 27 was.

2 There was an objection over relevancy.

3 JUDGE ROSAS: I received it.

4 MR. MCGOVERN: You received, yes.

5 JUDGE ROSAS: Next witness?

6 Whereupon,

7 AZEAM ALI

8 Having been duly sworn, was called as a witness herein, and was
9 examined and testified as follows:

10 JUDGE ROSAS: State and spell your name and address.

11 THE WITNESS: My name is Azeam Ali. A-Z-E-A-M. Ali,
A-L-I. I live at , Deer Park, New York,
13 11729.

14 DIRECT EXAMINATION

15 BY MR. ROSE:

16 Q Good afternoon, Mr. Ali.

17 A Good afternoon.

18 Q Mr. Ali, what do you do?

19 A I'm a foreman at Time Warner Cable.

20 Q How long have you worked for Time Warner?

21 A Since October 2000.

22 Q And how long have you been a foreman?

23 A Since January 2008.

24 Q What location do you work at?

25 A Paidge Avenue.

1 Q And how long have you worked at that location?

2 A I believe since 2007.

3 Q Okay. Are you a member of the union?

4 A Yes, I am.

5 Q What union, please?

6 A Local 3 IBEW.

7 Q And how long have you been a member of that union?

8 A Since I started at Time Warner.

9 Q I want to draw your attention to April 1, 2014. Were you

10 at work that day?

11 A Yes, I was.

12 Q Do you know someone named Kenny Lumberjean?

13 A Yes, I do.

14 Q Who is he?

15 A He's a colleague.

16 Q Did you speak to him that day?

17 A Yes, I did.

18 Q And just without explaining what was said, what was the

19 topic of the conversation that day?

20 A The suspension of other foreman and himself.

21 Q Do you know Phil Papale?

22 A Yes.

23 Q Who is he?

24 A He is the shop steward, or he was the shop steward at that

25 time.

- 1 Q And do you know Derek Jordan?
- 2 A Yes. And Derek is the business rep at Local 3.
- 3 Q Could you speak up, please?
- 4 A I'm sorry. Derek is the business rep at Local 3.
- 5 Q Thank you. On April 1st either at work or at home, did you
- 6 speak to any shop steward from your union?
- 7 A No, I didn't.
- 8 Q Did you speak to anybody who worked for the union on that
- 9 day?
- 10 A With another employee?
- 11 Q No, who works for the union, a union representative.
- 12 A No, I hadn't.
- 13 Q Now, what time did you leave work that day?
- 14 A I would say around 6:30 maybe 7:00.
- 15 Q And between that time and the time you went to sleep that
- 16 night, did you have any conversations with any coworker?
- 17 A I did have a conversation with my friend, Robert.
- 18 MR. MARGOLIS: I'm sorry, I couldn't get that.
- 19 THE WITNESS: I had a conversation with a friend,
- 20 Robert. He works at Time Warner also.
- 21 Q Okay. Was this in person or over the phone?
- 22 A Over the phone.
- 23 Q Who called you?
- 24 A He called me.
- 25 Q About what time?

1 A Maybe around 8:00. A little after 8:00 at night.

2 Q What was the subject of this conversation?

3 A He asked me if I can give him a ride to work the following
4 day.

5 Q Did you respond?

6 A I said, "Sure, I can, 'cause I'm actually going into the
7 city."

8 Q Were you scheduled to work April 2nd?

9 A No, I was not.

10 Q Why were you going into the city?

11 A I had a couple of things to do. One was I was meeting a
12 friend that was visiting from Florida.

13 And my wife has an apartment in the city. I was getting
14 her mail.

15 Q Did you in fact the following morning pick up Robert?

16 A Yes, I did.

17 Q And, oh, by the way, what time was it that you picked him
18 up?

19 A Around 5:30, 5:20.

20 Q And what car did you use?

21 A I used my personal car.

22 Q What kind of car was that?

23 A A 2008 Acura MDX.

24 Q And what time did you arrive in the area of Paidge Avenue,
25 roughly?

1 A Roughly between 7:00 and 7:20.

2 Q What street did you use to approach Paidge Avenue?

3 A When I get off from the LIE, I take Greenpoint to Provost
4 and then Provost to Paidge.

5 Q When you were on Provost that morning, what did you do
6 when you drove onto Provost?

7 A There was a lot of congestion towards where Paidge Avenue
8 intersection is.

9 So I let my friend, Robert, off a little bit before the
10 corner of Paidge Avenue and then I actually looked for a
11 parking spot to see what was going on.

12 Q Where did you park?

13 A I parked about a block away on Clay Street.

14 Q How did you get from where you were to Clay Street?

15 A I made a left turn.

16 Q A left turn onto what?

17 A Onto Paidge Avenue.

18 Q And about how far is Clay Street from Provost?

19 A Like a block, a block and a half, somewhere.

20 Q After you parked, what did you do?

21 A I walked back to the facility.

22 Q What did you see when you got there?

23 A I saw people gathered around the cars on the streets.

24 Q I'm sorry, where were the cars?

25 A On the street.

1 Q What did you do? Anything?

2 A Well, I asked some people I saw on the street, on the
3 sidewalk and on the street if they knew what was going on.

4 They said, no, they didn't. And then I saw Derek Jordan
5 standing in the middle of the street on Paidge Avenue.

6 So I walked over to him and asked him what was going on.

7 Q Did you get a response?

8 A He did. He asked me if I heard what happened to the
9 foreman the day before. I said, "Yes, I did."

10 And that's when he handed me a work safe flyer. And the
11 Weingarten Rights flyer.

12 And said, "Stick around, we're going to be talking about
13 this soon."

14 MR. ROSE: If I could ask the court reporter, please,
15 to show the witness what was marked but not offered yet,
16 General Counsel's 30.

17 JUDGE ROSAS: Isn't in that file?

18 THE WITNESS: Should I go through? Okay. I see the
19 Weingarten.

20 Q Okay. Are you looking at General Counsel's 30? Does it
21 say GC-30 on the bottom?

22 A Yes.

23 Q Okay. If you could -- those papers that you just held, if
24 you turn them over in front of you. No, the other papers, a
25 stack of them.

1 A Oh, this one?

2 Q Just turn them over. Now, if you look at the face of GC-
3 30. Thank you. Do you recognize that document?

4 A Yes.

5 Q What is it?

6 A It's the Weingarten Rights.

7 (General Counsel's Exhibit GC-30 identified)

8 Q Was that the flyer that you mentioned?

9 A I don't believe it is. I think it was more of a one
10 sheet.

11 Q Okay. All right. If you could turn that over, please.

12 A Sure thing.

13 Q Okay. So after this conversation with Mr. Jordan, what
14 did you do?

15 A Oh, I waited around for a few minutes. And then they
16 asked everybody to gather around in a circle so that everyone
17 could hear him properly.

18 Q And did he speak?

19 A Yes, he did.

20 Q What did you hear him say?

21 A He mentioned what happened to the foreman the day prior.
22 He also mentioned the shop steward was also suspended.

23 He mentioned that there were that many suspensions the day
24 prior that the safety chain has been broken and that we should
25 take very special care when we go into special situations like

1 project housing by ourselves and so forth.

2 Q Recall anything else he said?

3 A He mentioned Phil Papale getting suspended as well. He
4 also just took a bunch of different questions from the crowd.

5 I can't remember what the questions were, but I knew he
6 took questions. He also -- and I think that was it.

7 And he pretty much said, you know, for us to go back to
8 work after that.

9 Q And what did you do?

10 A I left the area. I went back to my car and left the area.

11 Q And what did you do?

12 A I went to the city and met with my friend. Picked up my
13 wife's mail.

14 Q When you were on Paidge Avenue, on the street, did you see
15 any managers or supervisors?

16 A Yes, I did.

17 Q And who did you see?

18 A I saw Marc Severino and Bill Brown. I saw Justin Finnerty
19 and Spencer Walker as well.

20 Q Where did you see them?

21 A Well, Marc Severino and Bill Brown were closer to the
22 nearest entrance gate that we have at Paidge Avenue. And
23 Justin and Spencer were closer to the entrance towards 99
24 Paidge Avenue.

25 Q Did you say any --

1 MR. MARGOLIS: I'm sorry, I'm having trouble hearing
2 him.

3 THE WITNESS: I'm sorry, I speak very low.

4 MR. MARGOLIS: I don't want to instruct him.

5 Q If you can please raise your voice, it would be helpful.

6 A Sure.

7 Q Thank you, Mr. Ali. Mr. Ali, did you say anything to
8 these supervisors?

9 A I did recall saying that it was wrong what they were doing
10 to our foremen.

11 Q After April 2nd, did any manager or supervisor talk to you
12 about what you did on April 2nd?

13 A Yes. There was --

14 Q About when was this?

15 A This was about a week later.

16 Q Okay. And where was this?

17 A This was in the conference room at 59 Paidge Avenue.

18 Q And who was in this room besides you?

19 A There was Justin Finnerty, Daymion Young, he's a shop
20 steward in Norton. And HR representative that I haven't seen
21 before or after.

22 Q Male or female?

23 A He's a male.

24 Q And how did this meeting begin? Who talked first and what
25 did he or she say?

1 A Well, the HR rep, he spoke first. He asked me what my
2 name was, what my position was, what my start time was, my
3 shift was.

4 He asked me if I was at the facility on April 2nd. I said,
5 "Yes, I was."

6 That's when he turned to the TV that we have in the
7 conference room at 59 Paidge, and he showed me a digital image
8 of myself and confirmed that that was me.

9 Then he asked me who else was there at the meeting. And I
10 told him Derek Jordan.

11 He asked me what was the meeting about. I said, "About
12 knowing our rights and working safely."

13 He also mentioned -- he asked me what did Derek Jordan
14 say. I said exactly what he said and what the flags were
15 about.

16 He talked about the foreman being suspended and so forth.
17 He asked me if I knew, if I read the CBA. I told him, yes, I
18 have.

19 He asked me if I remembered specifically a section that
20 mentioned there would be no work stoppage. And I told him I
21 don't recall specifically reading that.

22 That's when he read it out to me. He showed me the copy
23 with highlighted.

24 Q And what happened then?

25 A That was the end of the meeting.

1 MR. ROSE: Can I have one moment, Your Honor? I have
2 no further questions, Your Honor.

3 MR. MCGOVERN: No questions, Your Honor.

4 JUDGE ROSAS: Cross?

5 MR. MARGOLIS: Do you have copies of any statements
6 in the position of the General Counsel?

7 MR. ROSE: I do have. There is a affidavit with
8 regard to his April 2nd testimony here which I have provided, of
9 course.

10 There are also two supervisory status affidavits for
11 Your Honor to review.

12 JUDGE ROSAS: Let me see those.

13 MR. ROSE: What shall I do first? Shall I show you
14 the two affidavits, Your Honor?

15 JUDGE ROSAS: Well, you represent that the initial
16 affidavit is discloseable as a Jenks affidavit.

17 MR. ROSE: Yes.

18 JUDGE ROSAS: Right? So just the two that you say
19 are supervisory. Similar to the issue with Mr. Andersen.

20 MR. ROSE: Yes, Your Honor. I see. Here you are,
21 Your Honor.

22 JUDGE ROSAS: Okay. How many pages is that
23 affidavit, the one you're giving?

24 MR. ROSE: It is four pages.

25 JUDGE ROSAS: Okay. I'll give you five minutes. Off

1 the record.

2 (Whereupon, a brief recess was taken)

3 JUDGE ROSAS: Cross examination.

4 CROSS EXAMINATION

5 BY MR. MARGOLIS:

6 Q Mr. Ali, you were not scheduled to work on April 2nd, 2014,
7 correct?

8 A That's correct.

9 Q And you said the only reason that you drove to the area of
10 the Paidge Avenue facility was to give someone a ride, correct?

11 A That's correct.

12 Q That was someone named Robert?

13 A Yes.

14 Q Is that someone who works for Time Warner Cable?

15 A He did at the time, yes.

16 Q And where did he live at the time?

17 A Bay Shore, Long Island.

18 Q Okay. And you lived in Deer Park at the time, correct?

19 A That's correct.

20 Q Where's Deer Park?

21 A That's right near Bay Shore.

22 Q And so on one of your normal work days, Mr. Ali, do you
23 take that route up Provost Street to Paidge Avenue?

24 A Yes.

25 Q And then you would typically on a normal work day make a

1 right on Paidge Avenue?

2 A That's correct.

3 Q And then do you normally leave your car in a particular
4 place?

5 A Well, I'm assigned a company vehicle, so I drive it into
6 the facility.

7 Q Oh, okay, so you take the company vehicle home?

8 A Right.

9 Q And so on a normal work day you're driving the company
10 vehicle when you --

11 A Right.

12 Q -- get to Paidge Avenue. And you drive it into the
13 facility you said?

14 A Yes.

15 Q And can you describe for us how you get it into the
16 facility?

17 A Would make a right turn from Provost onto Paidge Avenue
18 and drive that straight, which leads into a gate that goes into
19 99 Paidge Avenue.

20 Q And when you say a gate that leads into 99 Paidge Avenue,
21 is that a big parking lot at the very end of Paidge Avenue?

22 A That's, yeah. It's actually a different address, but,
23 yes, it's the bigger parking lot, next to 59 Paidge.

24 Q And so if you think of Paidge Avenue as a dead end this is
25 the parking lot at the dead end, right?

1 A That's correct.

2 Q Okay. Now, on April 2nd, you were driving your personal
3 vehicle, correct?

4 A That's correct.

5 Q And when you got to the area of the Paidge Avenue
6 facility, you didn't drive your car down Paidge Avenue,
7 correct?

8 A Well, I made the left turn. I didn't go to the right turn
9 which leaves me at the facility.

10 Q Well, you make a left turn onto Provost Street.

11 A Onto Paidge Avenue.

12 Q Okay. So you were coming up Provost Street.

13 A Right.

14 Q And you normally would make a right on Paidge Avenue.

15 A That's correct.

16 Q And drive down to the parking lot?

17 A That's correct.

18 Q But on April 2nd, you didn't make a right onto Paidge
19 Avenue, correct?

20 A That's correct.

21 Q And the reason you didn't do that is because Paidge Avenue
22 was completely congested with cars, right?

23 A That's correct.

24 Q And completely congested with a lot of people in the
25 street, right?

1 A There was people on the street. I wouldn't say it was
2 completely congested, but.

3 Q Witnesses say there were 40 or 50 people in the street
4 when you showed up at Paidge Avenue.

5 A Sidewalk and then the street.

6 Q Mr. Ali, you just said, I think you just said that there
7 were 40 or 50 people on the street and the sidewalk?

8 A Yeah.

9 Q Isn't it true that there were 40 or 50 people just in the
10 street, Mr. Ali?

11 A I remember seeing people on the sidewalk is all.

12 Q Okay. I'm just talking about the street for the moment.
13 And would you agree there were 40 or 50 people in the street?

14 A I mean, I didn't really count how many. Just basically a
15 rough estimate. There was a lot of people in the street as
16 well.

17 Q Okay. And, Mr. Ali, do you remember giving a written
18 affidavit to a representative of the National Labor Relations
19 Board?

20 A Right.

21 Q And the representative was Audrey Evelon, wasn't it?

22 A That's correct.

23 Q And you gave that affidavit on November 5th, 2014?

24 A Mm mmm.

25 Q And you signed the affidavit and swore that it was true,

1 correct?

2 A That's correct.

3 Q Okay.

4 MR. MARGOLIS: Could I have marked for identification
5 five page documents. That would be Respondent's Exhibit 1 for
6 identification.

7 Q Mr. Ali, can you take a look at Respondent's Exhibit 1 for
8 identification.

9 And take a look at it and then tell us, is that the
10 affidavit that you signed when you met with a representative of
11 the National Labor Relations Board?

12 A Yes, it is. This is.

13 (Respondent's Exhibit R-1 identified)

14 Q And that's your signature at the end, correct?

15 A Yes.

16 Q I just want to read to you part of on page 2, starting at
17 line one.

18 And I'm going to show it to you so you can follow along as
19 I read it.

20 "On or about April 2nd, 2014, I drove a coworker to work at
21 the Employer's facility located at Paidge Avenue. I was not
22 scheduled to work that day.

23 I arrived at the Paidge Avenue facility at around 7:20
24 a.m. When I arrived, I saw a bunch of employees standing on
25 the street on Paidge Avenue.

1 I saw approximately 40 to 50 people spread out on the
2 street." Did I read that correctly?

3 A That's correct.

4 Q Now, what time was it that you arrived on Paidge Avenue?

5 A Again, I was estimating around between 7:00 and 7:20.

6 Q Okay. And you told us that the only reason you drove to
7 that neighborhood was to drop your friend off, right?

8 A That's correct.

9 Q And you parked your car on Clay Street because of all the
10 congestion.

11 A Yeah.

12 Q On Paidge, right?

13 A That's correct.

14 Q And you were on your way to New York City, right?

15 A That's correct.

16 Q And nevertheless, you parked your car and got out because
17 you were curious about what was going on, is that correct?

18 A That's also correct.

19 Q And then you walked over to Paidge Avenue, correct?

20 A Yes.

21 Q And you told us that at some point, Mr. Jordan told you
22 stick around, we're about to get started, correct?

23 A Mm mmm.

24 Q And do you have any idea what time it was that Mr. Jordan
25 said that to you?

1 A No, I'm not positive.

2 Q Okay. But sometime after he said that, a large number of
3 people all gathered together in a large group around, correct?

4 A That's correct.

5 Q And before Mr. Jordan said that to you, there was no
6 meeting going on, correct?

7 A No.

8 Q There was just people standing around in the street,
9 correct?

10 A That's correct.

11 Q And there were vehicles in the street, right?

12 A That's correct.

13 Q And when all those people gathered together around Mr.
14 Jordan, you stayed there, correct?

15 A Yes, I did.

16 Q And you stayed there until that large group broke up,
17 right?

18 A Yes.

19 Q And you recall that being about 8:00 a.m.?

20 A I really don't recall the time around, but it would
21 probably be around that time.

22 MR. MARGOLIS: I'm going to ask the reporter to mark
23 as Respondent Exhibit 2(a) through (g) for identification. A
24 series of photos.

25 MR. ROSE: For clarification, each page is a letter?

1 MR. MARGOLIS: Yes. So it looks like it's just 2(a)
2 through 2(f).

3 MR. ROSE: Okay.

4 Q Okay. Mr. Ali, can you look at the first page, Exhibits
5 2(a) through (f)?

6 And that page has a timestamp at the upper left, 7:52:27.
7 Do you see that?

8 A Yes, I do.

9 (Respondent's Counsel Exhibit R-2(a) through Respondent's
10 Counsel Exhibit R-2(f) identified)

11 Q And at the lower right, that's your face surrounded by the
12 orange square, isn't it?

13 A That is correct.

14 Q Okay. Can you turn to the second page which is 2(b)? And
15 at the lower right just next to the gentleman with gray hair,
16 that's you, isn't it?

17 A That's correct.

18 Q And on Exhibit 2(c), that's you again, you. You're kind
19 of cut off at the lower right, correct?

20 A That's correct.

21 Q And in 2(d), you're the at the lower right, you're the
22 first person who's visible at the lower right, correct?

23 A That's correct.

24 Q And if you take a look at Exhibit 2(e), that's you again
25 at the lower right, isn't it?

- 1 A That's correct.
- 2 Q And then Exhibit 2(f), that's you at the lower right,
3 isn't it?
- 4 A That's correct.
- 5 Q Okay. Now, in several of these, you're next to this
6 gentleman with gray hair. Let's take a look at the first one.
7 Exhibit 2(a). Do you recognize that person?
- 8 A Oh, I was told that that's a member of Local 3. I
9 actually don't know his name.
- 10 Q Okay. And who told you he was a member of Local 3?
- 11 A I think somebody in that crowd. I think he may have
12 introduced himself.
- 13 Q And other than introducing himself, did he say anything in
14 the course of this gathering?
- 15 A I don't recall.
- 16 Q Okay. When you were in this group of people, around
17 Derek Jordan, that are shown in Exhibits 2(a) through 2(e), did
18 you see Mr. Jordan there in that group?
- 19 A Yeah.
- 20 Q How far away were you from Mr. Jordan?
- 21 A Not far at all.
- 22 Q Can you give us an estimate?
- 23 A Maybe from here to you.
- 24 Q Maybe 10 feet.
- 25 A Approximately.

1 Q And so would you agree that the entire time that that
2 large group of people were gathered around Mr. Jordan, you were
3 there about 10 feet away from Mr. Jordan?

4 A That's about right.

5 Q I'm sorry?

6 A That's about right.

7 MR. MARGOLIS: I have no further questions.

8 MR. ROSE: Redirect, Your Honor.

9 JUDGE ROSAS: Off the record.

10 (Whereupon, a brief recess was taken)

11 MR. ROSE: We have no redirect, Your Honor.

12 MR. MCGOVERN: No questions, Your Honor.

13 JUDGE ROSAS: Thank you, sir. You're excused.

14 Please do not discuss your testimony with anyone unless you're
15 advised otherwise by Counsel.

16 Next witness? What do you need for the next witness?

17 MR. LUHRS: Exhibits.

18 JUDGE ROSAS: All of these here?

19 MR. LUHRS: There won't be any exhibits for the next
20 witness, Your Honor.

21 JUDGE ROSAS: Okay. Next witness.

22 MR. LUHRS: I call Diana Cabrera.

23 Whereupon,

24 DIANE CABRERA

25 Having been first duly sworn, was called as a witness herein,

1 and was examined and testified as follows:

2 JUDGE ROSAS: Please have a seat, state and spell
3 your name and provide us with an address.

4 THE WITNESS: My name is Diana Cabrera. And my home
address is , New York, New
6 York, 10024.

7 DIRECT EXAMINATION

8 BY MR. LUHRS:

9 Q Good afternoon, Ms. Cabrera. I'm going to ask you some
10 questions. Where are you employed?

11 A Time Warner Cable.

12 Q And when did you start working there?

13 A September 29th, 2010.

14 Q And what's your position with Time Warner Cable?

15 A RS1 technician.

16 Q Okay. And where is your job located?

17 A 59 Paidge Avenue, Brooklyn.

18 Q Are you a union member?

19 A Yes, I am.

20 Q Which union?

21 A IBEW Local 3.

22 Q And how long have you been a member of the union?

23 A Since I started to work.

24 Q Okay.

25 A Approximately six years.

1 Q Thank you. Are you familiar with the events that occurred
2 the morning of April 2nd, 2014?

3 A Yes, I am.

4 Q What occurred that morning?

5 A It was a safety meeting.

6 Q Did you attend that safety meeting?

7 A Yes, I did.

8 Q Were you scheduled to work that day?

9 A No, I was not.

10 Q How did you find out about the safety meeting?

11 A Through Facebook.

12 Q Where on Facebook?

13 A There was a posting on a page.

14 Q Okay. Did the page explain why there was going to be a
15 meeting?

16 A It was a safety meeting specifically.

17 Q How did you get to the safety meeting?

18 A By car.

19 Q Your car?

20 A No.

21 Q Did you own a car then?

22 A No.

23 Q Whose car was it?

24 A A coworker.

25 Q What happened when you arrived at the Paidge Avenue

1 facility?

2 A I got out of the car. My coworker straightened out,
3 parked the vehicle.

4 Q Where was this?

5 A Provost.

6 Q Okay. So your coworker parked on Provost?

7 A Yes.

8 Q What did you do after you got out of the car?

9 A I noticed that there were people congregating so I walked
10 over. I saw my coworkers.

11 Q Where?

12 A On the street.

13 Q On Provost?

14 A Some on Provost. But I saw them on Paidge.

15 Q Okay. What time was that?

16 A Between 6:30 and 7:30 in the morning.

17 Q Okay. When you walked up to Paidge Avenue, what did you
18 see?

19 A I saw people, coworkers. And I saw vehicles parked.

20 Q Parked in legal spots or parked in the street?

21 A Some were parked in legal spots, some were parked in the
22 middle of the street.

23 Q What did you do next?

24 A Small talk with coworkers. Greet them, say hello.

25 Q Did you discuss anything else with your coworkers?

1 A I don't remember much, it's been some time. But I know
2 that I said hello.

3 Q Okay. Then what happened?

4 A After waiting some time, the meeting had started. There
5 were some people speaking.

6 Q Who were speaking?

7 A Derek Jordan.

8 Q And how long after you got there did Derek Jordan start
9 speaking?

10 A I would say about approximately 20 minutes.

11 Q And what did Derek Jordan discuss?

12 A Derek Jordan was discussing the topic of work safety and
13 Weingarten rights.

14 Q Do you remember anything specific about work safety topic?

15 A To work safe, be aware of your surroundings in the
16 workplace, on the job, on the field.

17 Q Okay. How long did Derek Jordan speak for?

18 A I'm not sure, I don't remember.

19 Q Okay. Did anyone else speak?

20 A Yes, there was a man with white hair.

21 Q Do you know that man's name?

22 A No.

23 Q Do you know what he spoke about?

24 A The same thing. Just reiterated Weingarten rights, safety
25 in the workplace.

1 Q Did anyone else speak?

2 A There were some coworkers, some people mentioned talking
3 about some experiences, but it was just statements, I don't
4 remember specifics.

5 Q How did the safety meeting end?

6 A Just reminding everyone to understand their rights in case
7 they are approached by a manager or feel that they will be
8 disciplined to request union representation.

9 To be aware of their Weingarten rights and to work safe.

10 Q Okay. What did you do after the meeting ended?

11 A I left.

12 Q You walked back to the car?

13 A Yes.

14 Q Did any supervisor manager or other official speak to you
15 about the events of the morning of April 2nd, 2014?

16 A Yes.

17 Q What happened?

18 A Approximately two weeks after April 2nd, I was informed
19 that management had wanted to meet with me to discuss the
20 events of April 2nd and my participation in them.

21 Q Okay. Where did this meeting occur?

22 A This meeting occurred on Paidge, 59th Paidge on the 4th
23 floor.

24 Q Okay. Who was present at the meeting besides yourself?

25 A My shop steward, Jim Himko, Mary Maldonado and Ari Norman.

1 Q Okay. How did the HR meeting begin?

2 A The HR meeting began with Mary Maldonado expressing why I
3 was there, that she was there to investigate my participation
4 and the events of April 2nd.

5 Q Did you say anything in response to that?

6 A Yes. I asked if I should have an attorney there.

7 Q Okay. What did Ms. Maldonado say?

8 A Ms. Maldonado stated that I would not be allowed one.

9 Q Okay.

10 A She also stated that if I refused to answer the questions,
11 I would be disciplined for insubordination.

12 Q What other questions were asked of you?

13 A Ms. Maldonado asked me if I was there on April 2nd. Ms.
14 Maldonado asked me what was the topic of the meeting, what was
15 discussed.

16 She asked me who was there. She asked me how did I get
17 there. She asked me if I owned a vehicle. She asked me who I
18 was with.

19 She asked about my start date at Time Warner, my shift.

20 Q Do you recall any questions regarding the CBA?

21 A She read the CBA. She asked me if I was aware of a
22 particular paragraph in the CBA.

23 Q What was the paragraph?

24 A The paragraph was in reference to work stoppage.

25 Q Were you familiar with it?

1 A No.

2 Q Do you recall anything else?

3 A With regards to her questions?

4 Q Yes.

5 A No, it's been some time.

6 Q How did the HR meeting end?

7 A She stated this was an investigation and that they would
8 be in contact with -- I guess that was the conclusion.

9 That they would be in contact with me with regards to
10 disciplinary action.

11 Q Okay. Thank you.

12 MR. LUHRS: No further questions, Your Honor.

13 JUDGE ROSAS: Cross?

14 MR. MARGOLIS: Have copy of any statements in the
15 position of Counsel for the General Counsel?

16 JUDGE ROSAS: Off the record.

17 (Whereupon, a brief recess was taken)

18 JUDGE ROSAS: Cross examination.

19 CROSS EXAMINATION

20 BY MR. MARGOLIS:

21 Q Ms. Cabrera, Wednesday, April 2nd, was not a scheduled work
22 day for you, was it?

23 A No, it was not.

24 Q And you said that you rode to the Paidge Avenue facility
25 with someone else?

1 A Yes.

2 Q Was that a coworker?

3 A Yes.

4 Q Who was the coworker that drove you that day?

5 MR. LUHRS: Objection, Your Honor. Relevancy.

6 JUDGE ROSAS: Is there a Section 7 interest in the
7 objection?

8 MR. LUHRS: Yes, Your Honor.

9 MR. MARGOLIS: Your Honor, I don't conceivably see a
10 Section 7 interest.

11 It's someone driving to the employer's premises.
12 Particularly on the day where a manifestly unprotected blockade
13 occurred.

14 MR. LUHRS: Well, the issue I had was whether that
15 blockage was unprotected or not.

16 Or these individual's participation in the blockade
17 was unprotected.

18 This individual wasn't scheduled to work that day and
19 did not receive any discipline.

20 JUDGE ROSAS: When you say this individual, is
21 someone other than Ms. Cabrera?

22 MR. LUHRS: The coworker, yes. The coworker that
23 drove her. So, Ms. Cabrera and myself feel that is irrelevant
24 to produce this name as there could be retaliation.

25 JUDGE ROSAS: So the relevance of probing further

1 could lead to what type of treasure trove?

2 MR. MARGOLIS: It could lead to credibility questions
3 about the entire sequence of events.

4 JUDGE ROSAS: So she rode the train and didn't really
5 take the car, I mean.

6 MR. MARGOLIS: We don't know where it could lead,
7 Your Honor. But this is the information she provided.

8 And there doesn't seem to be any counter interest
9 about someone driving her to the premises.

10 JUDGE ROSAS: I don't see given the anonymity on
11 direct examination with respect to the coworker during the
12 representations by the General Counsel, given the lack of
13 anything older than a potential fishing expedition on your
14 part, which, of course, could lead to something.

15 But nothing that I can possibly fathom based on the
16 line of questioning that's here and the line involved in this
17 particular incidences, how she got there.

18 And what, if anything, that other person did as
19 Counsel indicated, may or may not be protected activity, but it
20 may.

21 And I think those interests outweigh your need to
22 probe further. Sustained.

23 MR. MARGOLIS: Thank you.

24 BY MR. MARGOLIS:

25 Q Ms. Cabrera, you testified that you learned about the

1 safety meeting on Facebook, correct?

2 A Yeah.

3 Q And that was on a Facebook page of Frank Cammarata, wasn't
4 it?

5 A No.

6 Q And have you ever seen Frank Cammarata's Facebook posting
7 about this "safety meeting?"

8 A I don't know who you're speaking of.

9 JUDGE ROSAS: Can you spell that last name?

10 MR. MARGOLIS: C-A-M-M-A-R-A-T-A.

11 Q And without asking you the name, was the Facebook posting
12 from an employee of Time Warner Cable or from someone else?

13 A I don't know. I don't remember.

14 Q How did you normally get to work had it been a regular
15 work day?

16 A Now?

17 Q In 2014.

18 A It would depend.

19 Q What would it depend on?

20 A Shifts, rideshares.

21 Q So as of April 2014, did you own your own car?

22 A No.

23 Q So is it fair to assume that you got a ride to work each
24 day?

25 A Not each day.

1 Q How did you get to work if you didn't get a ride to work?

2 A Taxi.

3 Q Okay.

4 A Or train.

5 Q All right. And let's start with when you -- there were
6 times when you would get to work from someone else?

7 A Sometimes.

8 Q Okay. And typically if it was a regular work day around
9 that time and you got a ride to work from someone else, would
10 the driver drive up Provost Street?

11 A Not all the time.

12 Q And if they didn't drive up Provost Street, what route
13 would they take to get to the facility?

14 A Well, it would depend who was driving.

15 Q Okay. From the documents that are already in evidence,
16 we're seen that there are two possible streets that get to the
17 Paidge Avenue facility.

18 There's Provost Street and there's Paidge Avenue. So is
19 it fair to say that sometimes when someone drove you to work,
20 they would drive up Provost Street?

21 A Yes.

22 Q And when that happened, when they got to Paidge Avenue,
23 they would turn right onto Paidge Avenue, correct?

24 A Sometimes.

25 Q And when they turned right onto Paidge Avenue, they would

1 drive down to either the garage or the parking lot at the end
2 of Paidge Avenue, correct?

3 A Correct.

4 Q Okay. Now, on other occasions if someone was driving to
5 work, did they sometimes drive down Paidge Avenue to the
6 facility?

7 A Sometimes.

8 Q And if someone drove, didn't take Provost, but just drove
9 on Paidge Avenue to the facility, they would drive all the way
10 down Paidge Avenue to either the garage or the parking lot,
11 correct?

12 A No, not all the time.

13 Q Okay. But sometimes they did that?

14 A Sometimes.

15 Q Okay. And when you took a taxi, you would take the taxi
16 to the main entrance, the pedestrian entrance at 59 Paidge
17 Avenue, correct?

18 A Yes.

19 Q Okay. Now, on April 2nd, you rode to the Paidge Avenue
20 facility with a coworker, correct?

21 A Yes.

22 Q And the coworker parked the car on Provost, right?

23 A Yes.

24 Q And at that point when you arrived where the car was
25 parked on Provost, there were people congregating both on

1 Provost and on Paidge Avenue, correct?

2 A Yes.

3 Q And the reason that your coworker friend parked on Provost
4 was that he or she couldn't get down Paidge Avenue, correct?

5 A I don't think so.

6 Q And you testified that people were congregating in the
7 street on Paidge Avenue, correct?

8 A Yes.

9 Q And how many people would you say were congregating in the
10 street on Paidge Avenue?

11 A Approximately from what I recall about 50.

12 Q Okay. Now, you gave some testimony about meetings that
13 took place.

14 A Yeah.

15 Q And when you arrived at Paidge Avenue, the meeting had not
16 yet started, correct?

17 A No.

18 Q And would it be fair to say that from the time you arrived
19 at Paidge Avenue until the meeting started, people were just
20 milling around in Paidge Avenue?

21 A What do you mean by milling.

22 Q Standing around talking.

23 A Some were standing, some were talking.

24 Q Okay.

25 A Some were -- we're people.

1 Q And there were cars in the middle of the Paidge, correct?

2 A There were some.

3 Q Now, you said that after some time a meeting started.

4 A Yes.

5 Q And you said that that meeting started about 20 minutes
6 after you got to Paidge Avenue?

7 A From what I remember.

8 Q And when the meeting started, so I understand correctly
9 that a large group of people gathered together around Derek
10 Jordan?

11 A There were people standing and to get closer to hear what
12 needed to be said.

13 Q And that's what you described as the meeting started,
14 correct?

15 A That's what I understood, yes.

16 Q And you were standing fairly close to Derek Jordan during
17 the meeting, weren't you?

18 A I think so.

19 Q And you stayed at the meeting until it ended, correct?

20 A Yes.

21 Q And that was around 8:00 wasn't it?

22 A I don't remember what time it ended.

23 MR. MARGOLIS: I'm going to ask the reporter to mark
24 as Respondent's 3(a) through (e) for identification, a series
25 of photographs.

1 Q Ms. Cabrera, you have before you Respondent's Exhibits
2 3(a) through 3(e) for identification.

3 (Respondent's Exhibit R-3(a) Respondent's Exhibit 3(e)
4 identified)

5 Can you take a look at the first page which is 3(a) has a
6 timestamp of 7:52:27 at the top? Is that you with the orange
7 circle around you at the lower left?

8 A It looks like me.

9 Q Okay. And do you see Derek Jordan in this picture?

10 A No.

11 Q Okay. And at the right hand side, you see there's a
12 gentleman with gray hair. Is that the person who you talked
13 about in your direct testimony as being somehow related to the
14 union?

15 A I don't know.

16 Q Okay. Can you take a look at the next page which is
17 Exhibit 2(b) with a timestamp of 7:46:26.

18 Is that you with the gray hood at the lower left of the
19 picture?

20 A I don't know.

21 Q Okay. You can't tell?

22 A I cannot tell.

23 Q Okay. Can you turn to the next page which is 3(c)?

24 And you see there, there's what looks like a woman in a
25 gray hood at the lower left. Is that you?

1 A It could be me.

2 Q Okay. And now, if you can turn to Exhibit 3(d) which has
3 a timestamp of 7:55:18. Again, there's a woman with a gray
4 hood at the lower left. That's you, isn't it?

5 A Looks like it.

6 Q Okay. And then if you turn to the next page which is
7 Exhibit 3(e) for identification, again there appears to be a
8 woman with a gray hood at the lower left and that's you, isn't
9 it?

10 A I think so.

11 Q Okay. By the way in that last one, do you see Derek
12 Jordan?

13 A Yes.

14 Q And can you just describe for us where Derek Jordan is?

15 A Somewhat in the middle.

16 Q Okay. So if I look straight down from the 53 seconds of
17 the timestamp, timestamp is 7:55:53, there's a gentleman with
18 his hand by his mouth.

19 And then the next person coming down, that would be Derek
20 Jordan, correct?

21 A With the hand in the air, that is Derek Jordan.

22 Q Okay.

23 JUDGE ROSAS: You offering it?

24 MR. MARGOLIS: Yes, Your Honor.

25 JUDGE ROSAS: Any objections?

1 MR. LUHRS: No objection.

2 MR. MCGOVERN: No objection.

3 JUDGE ROSAS: Respondent's 3(a) through (e) is
4 received in evidence.

5 (Respondent's Exhibit R-3(a) through Respondent's Exhibit 3(e)
6 received)

7 MR. MARGOLIS: Your Honor, did I offer the pictures
8 from the previous witnesses?

9 MR. ROSE: I don't believe so, Your Honor.

10 JUDGE ROSAS: You offer them right now.

11 MR. MARGOLIS: Okay. I'd like to do that now.

12 JUDGE ROSAS: Any objection?

13 MR. LUHRS: No objection.

14 JUDGE ROSAS: Okay. Respondent's 2(a) through (f)
15 are received in evidence.

16 (Respondent's Counsel Exhibit R-2(a) through Respondent's
17 Counsel Exhibit 2(f) received)

18 MR. MARGOLIS: Can I just have a moment, Your Honor?

19 JUDGE ROSAS: Sure.

20 MR. MARGOLIS: Nothing further, Your Honor.

21 JUDGE ROSAS: Any redirect?

22 MR. LUHRS: No, Your Honor.

23 MR. MCGOVERN: No questions.

24 JUDGE ROSAS: Thank you. Ma'am, you're excused.
25 Please do not discuss your testimony with anyone, unless

1 otherwise advised by Counsel, okay?

2 THE WITNESS: Thank you.

3 JUDGE ROSAS: Thank you, have a good day. Off the
4 record.

5 (Whereupon, a brief recess was taken)

6 JUDGE ROSAS: Who are you calling?

7 MR. ROSE: Frank Tsavaris.

8 Whereupon,

9 FRANK TSAVARIS

10 Having been first duly sworn, was called as a witness herein,
11 and was examined and testified as follows:

12 JUDGE ROSAS: All right. Please state and spell your
13 name and provide us with your address.

14 THE WITNESS: Frank Tsavaris. T-S-A-V-A-R-I-S. I
15 live at in the Bronx.

16 MR. ROSE: Your Honor, may I approach to put two
17 exhibits on the witness table?

18 DIRECT EXAMINATION

19 BY MR. ROSE:

20 Q Good afternoon, Mr. Tsavaris.

21 A Good afternoon.

22 Q Mr. Tsavaris, where do you work?

23 A At Time Warner Cable.

24 Q And what do you do?

25 A Right now I'm a field foreman.

1 Q How long have you worked for Time Warner?

2 A Today, over two years.

3 Q And how long have you been a field foreman?

4 A Since somewhere in the middle of September, around the
5 10th, 2013.

6 Q Are you a member of a union?

7 A Yes.

8 Q Which union, please?

9 A Electricians Union Local 3.

10 Q And how long have you been a member of that union?

11 A A total of 42 years.

12 Q Where do you work?

13 A At the address?

14 Q Yes, please.

15 A 59 Paidge Avenue.

16 Q How long have you worked at that location?

17 A Somewhere around seven to eight years, I would say. Maybe
18 shorter.

19 Q Mr. Tsavaris, can I ask you to turn over the exhibits I
20 gave you and look at what is marked as General Counsel's
21 Exhibit 32? 32. And can you identify that document, please,
22 if you can?

23 A Yes. It's a written final warning.

24 (Respondent's Exhibit R-32 identified)

25 Q Okay. And do you see the date, April 1st on that?

1 A Yeah. Date is correct, April 1st.

2 Q Is it.

3 A 2014.

4 Q Is that the date -- for whom is this final warning?

5 A It's for me.

6 Q Okay. Is that the date in which you received the final
7 warning?

8 A That's correct.

9 Q Where did you receive the warning?

10 A At 59 Paidge Avenue.

11 Q Where?

12 A Fourth floor conference room.

13 Q Who was in that conference room besides you?

14 A It was Phil Papale. It was the shop steward and Harry
15 Norman, he worked for the HR department and Marc Severino, my
16 manager at the time.

17 Q Briefly, please, what occurred at that meeting?

18 MR. MARGOLIS: Your Honor, I'm going to object at
19 this point.

20 We previously been told that these unrelated warnings
21 are relevant as predicates or background for what happened on
22 April 2nd.

23 That certainly does not require us to get into
24 litigating the underlying facts relating to this warning and
25 how it was administered in all of that.

1 JUDGE ROSAS: Repeat the question.

2 MR. ROSE: If he could briefly describe what occurred
3 at the meeting.

4 JUDGE ROSAS: The meeting on April 1st, 2014?

5 MR. ROSE: Mm mmm.

6 JUDGE ROSAS: Just a second. Okay. We stay clear of
7 those details in the previous incidents with Mr. Andersen. We
8 established the action taken and what he did following the
9 issuance of the warning, correct?

10 MR. ROSE: Correct.

11 JUDGE ROSAS: And now you want to go into the details
12 of that.

13 MR. ROSE: Very briefly. Can the witness be excused?

14 JUDGE ROSAS: Okay. It's just right outside the
15 door. Okay.

16 MR. ROSE: My intent is not to litigate anything. If
17 I may make a proffer, Your Honor, this is the meeting where the
18 shop steward, Phil Papale, was given a suspension.

19 And again, it's background and it shows impetus for
20 this gentleman, activity the following day. We're not going to
21 litigate the merits of anything.

22 It's just what occurred at the meeting and it could
23 be done very briefly or I could just ask about Mr. Papale if
24 you just want to go there.

25 JUDGE ROSAS: And Mr. Papale's suspension is relevant

1 as background to the facts here because?

2 MR. ROSE: As you heard from other witnesses, that
3 was discussed the following day as part of the meeting in the
4 street.

5 MR. MARGOLIS: We'll stipulate that Mr. Papale was
6 suspended on April 1st.

7 JUDGE ROSAS: You'll stipulate to it.

8 MR. ROSE: In this meeting with Mr. Tsavaris?

9 JUDGE ROSAS: At the same meeting?

10 MR. ROSE: Yes.

11 JUDGE ROSAS: Papale was there?

12 MR. ROSE: Yes.

13 MR. MARGOLIS: Can I have just a moment?

14 JUDGE ROSAS: Sure.

15 MR. MARGOLIS: So we would propose just to stipulate
16 that Mr. Papale was suspended on April 1st as a consequence of
17 alleged misconduct in the meeting with Mr. Tavares.

18 MR. ROSE: We'll accept that stipulation, Your Honor.

19 JUDGE ROSAS: Okay. You have a further line of
20 questioning for this witness?

21 MR. ROSE: Yes, I do, Your Honor.

22 JUDGE ROSAS: Okay.

23 MR. ROSE: And I believe I haven't offered GC-32 into
24 evidence. I'd like to do so now.

25 JUDGE ROSAS: Any objection?

1 MR. MCGOVERN: No.

2 MR. MARGOLIS: No. It's just the same relevance.

3 JUDGE ROSAS: Okay, overruled.

4 (General Counsel's Exhibit GC-32 received)

5 JUDGE ROSAS: But before he comes in, are we going to
6 have an issue over your General Counsel's 33 for ID? Do you
7 see it? Why don't you look at it.

8 MR. ROSE: For ID no.

9 JUDGE ROSAS: No, if he's going to have an objection.
10 'Cause you're going to offer it.

11 MR. ROSE: Yes.

12 JUDGE ROSAS: To the extent that it has anything to
13 do with the scope of Mr. Tsavaris's testimony.

14 MR. MARGOLIS: Okay, other than relevance, we don't
15 have any objection to GC-33.

16 JUDGE ROSAS: I'm going to receive it. Do you need
17 to ask him about that? I mean, who is the email from?

18 MR. ROSE: It's from the gentleman giving testimony.

19 JUDGE ROSAS: From him?

20 MR. ROSE: Yes.

21 JUDGE ROSAS: Mr. Tsavaris. Okay.

22 MR. ROSE: Mr. Tsavaris.

23 JUDGE ROSAS: You concede that?

24 MR. MARGOLIS: Well, if it's a personal email address
25 I'm not familiar with.

1 JUDGE ROSAS: Okay. So we'll elicit that. If we're
2 in agreement.

3 MR. ROSE: Yes, Your Honor.

4 JUDGE ROSAS: So I'm going to receive General
5 Counsel's 32 in evidence over objection.

6 (General Counsel's Exhibit GC-33 received)

7 MR. MARGOLIS: I'm sorry, before we proceed, I just
8 noticed that GC-33 refers to an attachment. Never mind.

9 DIRECT EXAMINATION (Cont)

10 BY MR. ROSE:

11 Q Mr. Tsavaris, I'm not going to ask you questions about the
12 meeting that I was going to ask you about earlier. But just
13 briefly, what did you do after the meeting?

14 A At the final end of the meeting, I asked for my
15 disciplinary, a copy of it and Phil Papale left the room
16 already before me.

17 They gave me a copy, Walt gave me a copy. I started to
18 walk down the hallway. I was going to go down to my cubicle,
19 shut off my computer.

20 I was reading the disciplinary and I realized that they
21 didn't put down that I was suspended, or did they put down how
22 many days the suspension was or when I could return back to
23 work.

24 So that's as I was walking down the hallway. So I said,
25 let me go see my director which was Colin Hedmonds at the time.

1 And I brought the document over to him and explained to
2 him that I was just suspended.

3 They didn't document what happened. That I was suspended
4 on my write up or how many days the suspension was or when I
5 was to return back to work.

6 I gave him the paperwork, he looked at it, he told me to
7 bring it back to Marc Severino and let him fill out all that
8 information.

9 I told him I feel that that's not my job to do that. He
10 works for you.

11 I would like to recommend if you go down to tell him to do
12 it. He agreed and we both walked down to Marc's office.

13 Q Okay. And after you're at Marc's office, what did you do?
14 Where did you go?

15 A Walked to my cubicle, shut off my computer, proceeded to
16 go downstairs to the transport and punch out and go home.

17 Q Okay. How did you get home?

18 A I drove my Scion company vehicle.

19 Q If you could please look at General Counsel's Exhibit 33.
20 It's a one-page document. I'm going to ask you, sir, do you
21 recognize this document?

22 A Correct.

23 Q And what is it, please?

24 A When I got home, I wrote up an email. And I sent it to my
25 two shop stewards and also to Derek Jordan, stating that I was

1 suspended for a day and a half and I was filing grievance
2 against Time Warner.

3 (Respondent's Counsel Exhibit R-33 identified)

4 Q Was there an attachment to this email?

5 A Correct.

6 Q And what was attached, sir?

7 A This document.

8 Q Are you holding up GC-33?

9 A Yes.

10 Q Okay.

11 MR. ROSE: Your Honor, I offer into evidence as GC-
12 33.

13 MR. MCGOVERN: No objection.

14 MR. MARGOLIS: No objection.

15 JUDGE ROSAS: General Counsel's 33 is received.

16 BY MR. ROSE:

17 Q Mr. Tsavaris, after the meeting you spoke about with Mr.
18 Papale on April 1st. When was the next time you spoke with Mr.
19 Papale?

20 A The following day.

21 Q What time of day?

22 A It was very early in the morning. I would say anywhere
23 from ¼ after 6:00 to 6:30.

24 Q Was this in person or over the phone?

25 A No, it was over the phone.

- 1 Q Who called him?
- 2 A Phil gave me a call.
- 3 Q Okay. And how long was this conversation?
- 4 A A matter of seconds.
- 5 Q What was the topic of the conversation?
- 6 A He said there was going to be a safety meeting at Paidge
- 7 Avenue.
- 8 Q Did you respond to him?
- 9 A Yes, I did. I said I was going to be there.
- 10 Q Anything else in this conversation?
- 11 A No.
- 12 Q After you hung up, what did you do?
- 13 A I got dressed, showered, got dressed and proceeded to
- 14 drive to Paidge Avenue.
- 15 Q What did you drive in?
- 16 A My personal vehicle.
- 17 Q About when did you leave your home?
- 18 A I would say about 7:00.
- 19 Q Where do you live? At that time where did you live?
- 20 A At the same location I told you, 3204 Cambridge Place in
- 21 the Bronx.
- 22 Q When you arrived in the area of Paidge Avenue, by the way,
- 23 where did you go when you left in the car?
- 24 A When I drove to Paidge?
- 25 Q Yes.

1 A I parked somewhere off of Manhattan Avenue and Clay Street
2 which is next to Paidge Avenue.

3 Q After you parked, what did you do?

4 A Got out of my vehicle, made a right onto, walked down to
5 Paidge, made a right onto Paidge and started walking down. It
6 was Paidge Avenue at the Time Warner facility.

7 Q And when you got in the area of the facility, what did you
8 see?

9 A I could see a large number of trucks, a large number of
10 vehicles in the street on both sides parked and then totally in
11 the middle of the street and further down in the distance a
12 crowd.

13 Q Okay. And when you --

14 MR. MARGOLIS: I'm sorry, if you could just --

15 Q Could you speak -- what was the last few words that you
16 said?

17 A And further down in the distance there was a crowd.

18 Q What did you do when you saw that crowd?

19 A I proceeded to keep walking down. I had walked into the
20 crowd.

21 Q Okay. And what happened next?

22 A I was greeted by a number of employees. Shook their
23 hands, said hello to them. Asked what was going on.

24 A little chit chatter. I seen Phil, said hello to Phil.
25 Seen Derek.

1 Q What was Derek doing at the time?

2 A He was talking to the men.

3 Q Do you recall what he was talking about?

4 A Basically about safety on the job.

5 Q And how long were you there on that job?

6 A I would say anywhere from about 15 to 20 minutes.

7 MR. ROSE: Can I ask the court reporter to show the
8 witness General Counsel's Exhibit 30, please?

9 JUDGE ROSAS: I have it.

10 Q Do you recognize that document, sir?

11 A The Weingarten rights.

12 Q Have you ever seen that before?

13 A Yeah, I seen it before.

14 Q Where?

15 A I seen it at the Union hall.

16 Q All right. Thank you. If you could turn that over,
17 please.

18 A Turn this way.

19 Q So in this crowd, about how long were you there?

20 A Approximately 15 to 20 minutes.

21 Q And what did you do after that time?

22 A I seen the crowd start to disperse, going into the -- a
23 lot of them were going into Time Warner to go to work.

24 Q And what did you do?

25 A I left the area.

1 Q Where did you go specifically?

2 A I walked back down to where my vehicle was. I drove down.

3 MR. ROSE: And no further questions, Your Honor.

4 MR. MCGOVERN: No questions.

5 JUDGE ROSAS: Cross?

6 MR. MARGOLIS: May I have a copy of any statements?

7 JUDGE ROSAS: Off the record.

8 (Whereupon, a brief recess was taken)

9 JUDGE ROSAS: Cross examination.

10 CROSS EXAMINATION

11 BY MR. MARGOLIS:

12 Q Mr. Tsavaris, as a foreman, are you assigned a company
13 vehicle?

14 A Correct.

15 Q And is that a pickup truck?

16 A Yes.

17 Q A white pickup truck?

18 A Yes.

19 Q And do you normally drive the pickup truck home and then
20 back to work?

21 A Correct.

22 Q Now, on April 2nd, 2014, you drove your personal vehicle to
23 the Paidge Avenue location, correct?

24 A Yes.

25 Q And on a regular workday when you're driving there in the

1 company vehicle, where do you park the vehicle?

2 A Usually inside the facility.

3 Q And so on a typical workday around that time, you would
4 drive down Paidge Avenue and pull into the garage?

5 A Correct.

6 Q And in the garage entrance that you would pull into on a
7 regular workday, is all the way down Paidge Avenue close to the
8 pedestrian entrance, correct?

9 A Correct.

10 Q Now, on April 2nd, you weren't able to drive your car down
11 Paidge Avenue, were you?

12 A I didn't go down that far at all.

13 Q And in fact when you got to Paidge Avenue, Paidge Avenue
14 was full of people and vehicles, isn't that true?

15 A When I walked down.

16 Q And when you walked down Paidge Avenue, you subsequently
17 participated in a meeting, correct?

18 A We walked into the crowd and there was a meeting going on.

19 Q Okay.

20 A Safety meeting.

21 Q I'm sorry?

22 A Safety meeting.

23 Q Okay. And as you're walking down Paidge Avenue, had that
24 meeting started already?

25 A I guess. Well, yeah.

1 Q And what we've described as a meeting were a large group
2 of people gathered around Derek Jordan. Isn't that correct?

3 A Correct.

4 Q And you stayed in the meeting in that crowd for about 15
5 to 20 minutes, right?

6 A Correct.

7 Q In fact you stayed until it broke up, didn't you?

8 A Yeah. It started to disperse, that's when I left.

9 MR. MARGOLIS: I'm going to ask the reporter to mark
10 as Exhibit R-4(a) through (e), a series of five photographs.

11 Q Mr. Tsavaris, if you could take a look at Exhibit 4(a)
12 through (e).

13 (Respondent's Counsel Exhibit R-4(a) through Respondent's
14 Counsel Exhibit 4(e) identified)

15 Q And start with the first page which is marked as 4(a).
16 And you'll see there's an orange square around a person on the
17 left side.

18 And that's you in that orange square isn't it?

19 A It looks like me.

20 Q Okay.

21 A 'Cause it looks like this guys has a mustache.

22 Q And can you take a look at the next page which is Exhibit
23 4(b)? And that's you over at the left hand side about halfway
24 down the picture, isn't it? The person with glasses?

25 A Yeah, I would say so.

1 Q Okay. And then let's turn to the next page which is 4(c).

2 And the person it looks like they have a mustache

3 immediately under the 28 seconds of the timestamp. Do you see

4 the timestamp of 7:45:28 at the top?

5 A Over here?

6 Q Correct. And the person immediately under that 28 is Phil

7 Papale, isn't it?

8 A Correct.

9 Q And that's you next to Mr. Papale, isn't it?

10 A Correct.

11 Q And to Mr. Papale's left is Derek Jordan, correct?

12 A Correct.

13 Q Okay. And let's turn to the next page which is Exhibit

14 4(d) for identification. And you see toward the left hand

15 side, there's a gentleman holding a, what looks like a white

16 coffee cup.

17 A Correct.

18 Q And that's you immediately to the left of that coffee cup,

19 isn't it?

20 A Correct.

21 Q And then on the last page which is Exhibit 4(e), again,

22 you see that white coffee cup over toward the left.

23 And that's you. Your face is kind of cutoff but that's

24 you just to the left of the coffee cup, isn't it?

25 A Correct.

1 Q Okay.

2 MR. MARGOLIS: I move for the admission of Exhibits
3 4(a) through 4(e).

4 MR. ROSE: No objection.

5 MR. MCGOVERN: No objection.

6 JUDGE ROSAS: Respondent's 4(a) through 4(E) are
7 received.

8 (Respondent's Counsel Exhibit R-4(a) through Respondent's
9 Counsel Exhibit 4(e) received)

10 Q Mr. Tsavaris, do you have General Counsel's Exhibit 33 up
11 there?

12 A Yes.

13 Q General Counsel's Exhibit 33 is a grievance that you filed
14 relating to your suspension on April 1st, correct?

15 A Yes.

16 Q And it's addressed to James and Phil. Those are your shop
17 stewards, correct?

18 A Correct.

19 Q And in your view it was efficient to file a grievance by
20 sending an email, correct?

21 A Correct.

22 Q You didn't feel the need to drive from the Bronx to Paidge
23 Avenue for the purpose of filing a grievance with the shop
24 steward, did you?

25 A This is after I left the meeting you're talking about.

1 No, I went home and then I filed a grievance.

2 Q Okay. So you didn't feel it was necessary to drive to
3 Paidge Avenue for the purpose of filing a grievance?

4 A No. I went home and I filed a grievance.

5 Q Okay.

6 MR. MARGOLIS: No further questions, Your Honor.

7 JUDGE ROSAS: Any follow up?

8 MR. ROSE: I just have one, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. ROSE:

11 Q Mr. Tsavaris, if you look at Respondent's 4(c)

12 MR. MCGOVERN: Oh, the photo pack.

13 THE WITNESS: The picture?

14 Q Yes. Do you see the coffee cup on the left?

15 A Yes.

16 Q Who is that faced to the left of the coffee cup? Do you
17 know him?

18 A Holding the coffee cup?

19 Q Not holding. Just the face that appears to the left of
20 the coffee cup.

21 A You're not talking about Phil Papale, you're talking about
22 this gentleman?

23 Q To the left of the coffee cup.

24 A Over here?

25 Q To the left.

1 A That's me.

2 Q That's you.

3 A Yes.

4 MR. ROSE: May I have one moment, Your Honor? No
5 further questions, Your Honor.

6 MR. MCGOVERN: No questions.

7 JUDGE ROSAS: Do you have any follow up?

8 MR. MARGOLIS: No, Your Honor.

9 JUDGE ROSAS: Okay. Thank you. Sir, you're excused.
10 Do not discuss your testimony with anyone 'til advised
11 otherwise by Counsel, okay?

12 THE WITNESS: Thank you.

13 JUDGE ROSAS: All right. Have a good day.

14 MR. ROSE: Your Honor, normally General Counsel would
15 rest at this point, however, we don't have all the documents
16 and we don't have the answer to the second amended complaint,
17 so we can't rest at this time.

18 JUDGE ROSAS: Okay. Okay. We will continue with
19 General Counsel's --

20 MR. ROSE: Your Honor?

21 JUDGE ROSAS: Yeah.

22 MR. ROSE: Also, if I can ask for the affidavits
23 back, that one that wasn't marked for identification, because
24 we have no more witnesses in General Counsel's case in chief.

25 MR. MARGOLIS: Your Honor, under the case handling

1 manual we're entitled to retain the evidence until the record
2 closes.

3 JUDGE ROSAS: My practice is to at the end of each
4 day give it back to General Counsel. All right. We'll
5 continue with General Counsel's case or the remains of it
6 tomorrow at 9:30. See everybody tomorrow.

7 (Whereupon, at 5:05 p.m. the above entitled matter was to
8 reconvene at (9:30 a.m. Tuesday, April 12, 2016)

9

C E R T I F I C A T E

This is to certify that the attached proceedings done before
the NATIONAL LABOR RELATIONS BOARD REGION 2

In the Matter of:

Time Warner Cable New York City, LLC,
Employer,

And

Local Union No. 3, International Brotherhood
of Electrical Workers, AFL-CIO,
Union

Case No.: 02-CA-126860

Date: Monday, April 11, 2016

Place: National Labor Relations Board, Region 2, Javits
Building, 26 Federal Plaza, 36 Floor Courtroom New York, New
York, 10278.

Were held as therein appears, and that this is the original
transcript thereof for the files of the Board

Official Reporter

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